

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

CHRYSTAL BJORK, Petitioner

July 17, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 11-0153 (BOR Appeal No. 2044813)
(Claim No. 2009058079)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
BECKLEY APPALACHIAN REGIONAL HEALTHCARE,
Respondent**

MEMORANDUM DECISION

Petitioner Chrystal Bjork, by Reginald Henry, her attorney, appeals the West Virginia Workers' Compensation Board of Review's Order closing the claim for temporary total disability benefits. Beckley Appalachian Regional Healthcare, by H. Dill Battle III, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated December 22, 2010, in which the Board affirmed a July 14, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's July 10, 2009, decision to close the claim for temporary total disability benefits. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

Having considered the petition and the relevant decision of the lower tribunal, the Court is of the opinion that the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the Court determines that there is no prejudicial error. This case does not present a new or significant question of law. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

Ms. Bjork was working for Beckley Appalachian Regional Healthcare as a phlebotomist when she fell and injured her lower back on August 25, 2008. On September 18, 2008, the claims administrator held the claim compensable for a lumbar sprain. The claims administrator issued a notice on June 10, 2009, outlining the reasons for the suspension of temporary total disability

benefits, and evidence substantiating the continuation of benefits was not received. On July 10, 2009, the claims administrator closed Ms. Bjork's claim and denied any additional temporary total disability benefits.

The Office of Judges, in affirming the claims administrator's Order, found that Ms. Bjork had reached maximum medical improvement and was no longer eligible for temporary total disability benefits. On appeal, Ms. Bjork disagrees and asserts that according to her treating physician, she has not reached maximum medical improvement, and is unable to return to work. Beckley Appalachian Regional Healthcare argues that it was correct to close the claim for temporary total disability benefits because Ms. Bjork's current symptoms are due to a preexisting condition. Dr. A.E. Landis found Ms. Bjork was at maximum medical improvement in relation to the lumbar sprain she suffered on August 25, 2008, noting that Dr. Mukkamala previously found the same. The Office of Judges noted that Ms. Bjork's current problem appeared to be neck pain. Further, it noted that she has a long history of chronic back problems not attributable to the compensable injury and which are most likely the cause of her current symptoms.

In reaching the conclusion to close the claim for temporary total disability benefits, the Office of Judges noted that under West Virginia Code § 23-4-7a (2005), a claimant is no longer entitled to receive temporary total disability benefits upon receiving information that he/she has reached maximum medical improvement. It also noted that symptoms from preexisting chronic problems are not a basis to receive temporary total disability benefits. Thus, the Office of Judges affirmed the closure of the claim for temporary total disability benefits. The Board of Review reached the same reasoned conclusion in its decision of December 22, 2010.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of any constitutional or statutory provision, nor is it clearly the result of erroneous conclusions of law, nor is it based upon a material misstatement or mischaracterization of the evidentiary record. Therefore, the Board of Review Order is affirmed.

Affirmed.

ISSUED: July 17, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Margaret L. Workman

Justice Thomas E. McHugh

Justice Brent D. Benjamin not participating