

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

February 20, 2013
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

**SAYHRA D. WILLIAMS,
Claimant Below, Petitioner**

vs.) **No. 11-0841** (BOR Appeal No. 2045235)
(Claim No. 2010117078)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER
Commissioner Below, Respondent**

and

**KROGER LIMITED PARTNERSHIP I,
Employer Below, Respondent**

MEMORANDUM DECISION

Petitioner Sayhra D. Williams, by Patrick Maroney, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Kroger Limited Partnership I, by Sean Harter, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated April 27, 2011, in which the Board affirmed an October 6, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's November 18, 2009, and January 19, 2010, decisions denying Ms. Williams's applications for workers' compensation benefits. The Court has carefully reviewed the records, written arguments, and appendices contained in the briefs, and the case is mature for consideration.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Rules of Appellate Procedure.

Ms. Williams was working for Kroger Limited when she allegedly injured her back on July 11, 2009. She filed an application for workers' compensation benefits, and on November 18, 2009, the claims administrator denied the application. Ms. Williams suffered another alleged injury while at work on November 10, 2009. On January 19, 2010, the claims administrator denied her application for workers' compensation benefits. The claims administrator found in each instance that Ms. Williams had not sustained a new injury to her back, but was suffering from symptoms relating to her preexisting back conditions.

The Office of Judges held that the preponderance of the credible evidence did not establish that Ms. Williams suffered from a work-related injury in July or November of 2009. On appeal, Ms. Williams argues that she had not been suffering from back problems for almost two years when the first work-related injury occurred, and that her preexisting conditions and forgetfulness should not disqualify her from workers' compensation benefits. Kroger maintains that the current back condition is not directly attributable to a definite, isolated, fortuitous occurrence, but rather a congenital condition.

In affirming the denial of workers' compensation benefits, the Office of Judges noted an extensive history of back problems, and inconsistent testimony by Ms. Williams. The Office of Judges found that Ms. Williams had been having back problems since the age of eight, including several low-back injuries, despite her denial of such injuries. Further, it noted inconsistencies in Ms. Williams's testimony regarding the circumstances of the alleged work-related injuries. The Office of Judges concluded that the evidence did not establish that Ms. Williams had suffered from an injury in the course of or resulting from her employment. The Board of Review reached the same reasoned conclusions in its decision of April 27, 2011. We agree with the reasoning and conclusions of the Board of Review.

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 decision of the Board of Review is affirmed.

Affirmed.

ISSUED: February 20, 2013

CONCURRED IN BY:

Chief Justice Brent D. Benjamin
Justice Robin J. Davis
Justice Margaret L. Workman
Justice Allen H. Loughry II

DISSENTING:

Justice Menis E. Ketchum