

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

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

**REBECCA CIVITILLO,
Claimant Below, Petitioner**

vs.) **No. 11-0875** (BOR Appeal No. 2045207)
(Claim No. 2006063475)

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

and

**GO-MART, INC.,
Employer Below, Respondent**

MEMORANDUM DECISION

Petitioner Rebecca Civitillo, by Samuel Hanna, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Go-Mart, Inc., by Timothy Huffman, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated May 4, 2011, in which the Board affirmed an October 21, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's January 23, 2007, decision denying Ms. Civitillo's request 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. Civitillo worked for Go-Mart, Inc. as a retail manager. She alleges that as a result of this employment she suffered exposure to benzene resulting in headaches, cough, chronic ear infections, upper respiratory infection, sleeplessness, fever, chronic fatigue, and several other symptoms. The claims administrator on January 23, 2007, denied her request for workers' compensation benefits.

The Office of Judges concluded that the preponderance of the evidence did not establish that Ms. Civitillo incurred an occupational exposure which resulted in an occupational disease as a result of her employment. The Office of Judges noted that a report by Enviroprobe found that the results of an evaluation for benzene exposure were less than 1% of the OSHA permissible exposure level. It further noted that Ms. Civitillo had previously stated that the symptoms began when she received a lumbar epidural. The evidence does not establish that Ms. Civitillo suffers from an occupational disease under West Virginia Code § 23-4-1(f) (2008). The Board of Review reached the same reasoned conclusions in its decision of May 4, 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 Menis E. Ketchum
Justice Allen H. Loughry II