

**STATE OF WEST VIRGINIA**

**SUPREME COURT OF APPEALS**

**FILED**

January 14, 2014

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

**JULIE L. (NUTTER) YOUNG,  
Claimant Below, Petitioner**

vs.) **No. 12-0508** (BOR Appeal No. 2046339)  
(Claim Nos. 2010128125, 2008034949 & 2005039692)

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

**SIGNATURE HOSPITAL, LLC,  
Employer Below, Respondent**

**ST. JOSEPH'S HEALTHCARE SYSTEM, LP,  
Employer Below, Respondent**

**and**

**COLUMBIA – ST. JOSEPH'S HEALTHCARE SYSTEM, LP,  
Employer Below, Respondent**

**MEMORANDUM DECISION**

Petitioner Julie L. (Nutter) Young, by George Zivkovich, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Signature Hospital, LLC, by Michael N. Watson, its attorney, and St. Joseph Healthcare System, LP, by Timothy E. Huffman, its attorney filed timely responses.

This appeal arises from the Board of Review's Final Order dated March 29, 2012, in which the Board affirmed an August 5, 2011, Order of the Workers' Compensation Office of Judges. The Board also remanded the case to the claims administrator with instructions to determine if Ms. Young was entitled to temporary total disability benefits with respect to her March 8, 2010, injury. In its Order, the Office of Judges reversed the claims administrator's

April 7, 2010, decision rejecting the claim for right shoulder impingement, tendinitis of the right biceps, and right cervical radiculopathy. The Office of Judges also affirmed the claims administrator's April 26, 2010, decision insofar as it rejected Ms. Young's application for additional temporary total disability benefits relating to her March 7, 2008, injury. In its Order, the Office of Judges reversed the claims administrator's April 26, 2010, decision insofar as it rejected Ms. Young's unspecified request for treatment. The Office of Judges reversed the claims administrator's July 12, 2010, denial of Ms. Young's treatment request. The Office of Judges affirmed the claims administrator's August 24, 2010, decision denying Ms. Young's request for trigger point injections. Finally, the Office of Judges affirmed the claims administrator's September 15, 2010, decision denying Ms. Young temporary total disability benefits in relation to her March 30, 2005, injury. 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. Young worked as a phlebotomist. On March 30, 2005, Ms. Young injured the left side of her neck while pushing a heavy patient in a wheelchair. On March 7, 2008, Ms. Young again injured her neck while attempting to restrain a combative patient. Both claims were held compensable. Dr. Shramowiat treated Ms. Young based on both claims but she continued to work. On March 8, 2010, Ms. Young was reaching for a light switch over a patient's bed when she experienced pain in her neck and right shoulder. Dr. Shramowiat diagnosed Ms. Young with right shoulder impingement, tendinitis of the right biceps, and right cervical radiculopathy. Ms. Young filed an application for workers' compensation based on her March 8, 2010, injury but the claims administrator rejected her claim on April 7, 2010. Ms. Young also applied for additional medical treatment and temporary total disability benefits based on her March 7, 2008, injury. But the claims administrator denied her request on April 26, 2010. On July 12, 2010, the claims administrator also denied Ms. Young's request for additional unspecified medical treatment in relation to her March 7, 2008, injury. On August 24, 2010, the claims administrator denied authorization for trigger point occipital nerve blocks in relation to her March 30, 2005, injury. On September 15, 2010, the claims administrator then denied Ms. Young's request for additional temporary total disability benefits in relation to her March 30, 2005, injury.

On August 5, 2011, the Office of Judges reversed the April 7, 2010, claims administrator decision and held the March 8, 2010, claim compensable for right shoulder impingement, tendinitis of the right biceps, and right cervical radiculopathy. The Office of Judges affirmed the portion of the claims administrator's April 26, 2010, decision denying additional temporary total disability benefits. But the Office of Judges reversed the portion of the claims administrator's decision which denied Ms. Young's request for unspecified treatment in relation to her March 7, 2008, injury. The Office of Judge also affirmed the August 24, 2010, and September 15, 2010, claims administrator decisions. The Board of Review then affirmed the Order of the Office of

Judges on March 29, 2012, leading Ms. Young to appeal. The Board of Review also remanded the case to the claims administrator for consideration of temporary total disability benefits in relation to Ms. Young's March 8, 2010, injury.

The Office of Judges concluded that Ms. Young suffered an occupational injury on March 8, 2010. The Office of Judges held the claim compensable for right shoulder impingement, tendinitis of the right bicep, and right cervical radiculopathy. The Office of Judges determined that Ms. Young was injured by an isolated and fortuitous event in the course of and resulting from her employment. The Office of Judges further determined that Ms. Young experienced an immediate onset of symptoms and that she developed new conditions following the injury. The Office of Judges found that the objective medical evidence in the case and the opinion of Dr. Shramowiat showed that Ms. Young had received a new injury. The Office of Judges also concluded that Ms. Young was entitled to medically related and reasonably required treatment for her March 7, 2008, injury. The Office of Judges found that, even though Ms. Young had suffered a new injury, she was still entitled to treatment relating to her March 7, 2008, injury. But the Office of Judges concluded that Ms. Young was not entitled to treatment or temporary total disability benefits in relation to her March 30, 2005, injury. The Office of Judges found that Ms. Young had reached the maximum degree of medical improvement in relation to her March 30, 2005, injury and that any continuing need for treatment related to her March 7, 2008, and March 8, 2010, injuries.

The Board of Review adopted the findings of the Office of Judges and affirmed its Order. The Board of Review also remanded the case to the claims administrator with instructions to determine if Ms. Young was entitled to temporary total disability benefits in relation to her March 8, 2010, injury. Ms. Young requested that the Board of Review add left cervical radiculopathy as a compensable condition of the claim and that she receive temporary total disability benefits for her March 8, 2010, injury. The Board of Review determined that there was insufficient evidence to establish that left cervical radiculopathy should be included as a compensable component of the claim. The Board of Review also determined that, since Ms. Young's March 8, 2010, injury was held compensable, the issue of her entitlement to temporary total disability benefits should be addressed by the claims administrator.

We agree with the conclusions of the Board of Review and the findings of the Office of Judges. Ms. Young has presented sufficient evidence to show that she suffered a new injury on March 8, 2010, in the course of and resulting from her employment. The medical evidence in the record shows that this injury should be held compensable for right shoulder impingement, tendinitis of the right biceps, and right cervical radiculopathy. Ms. Young has not presented sufficient evidence to show that left cervical radiculopathy should be added as a compensable component of the claim. Ms. Young is entitled to consideration for the temporary total disability benefits relating to her March 8, 2010, injury.

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: January 14, 2014**

**CONCURRED IN BY:**

Chief Justice Robin J. Davis  
Justice Margaret L. Workman  
Justice Menis E. Ketchum  
Justice Allen H. Loughry II

Justice Brent D. Benjamin, not participating