

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

PHYLLIS A. MOONEY,
Claimant Below, Petitioner

FILED
January 16, 2014
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 12-0626 (BOR Appeal No. 2046567)
(Claim No. 2010130777)

UMWA INTERNATIONAL UNION,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Phyllis A. Mooney, by Edwin H. Pancake, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. UMWA International Union, by Steven K. Wellman, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated April 20, 2012, in which the Board affirmed an October 13, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's May 14, 2010, decision denying Ms. Mooney's request for compensability of her left carpal tunnel syndrome. 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. Mooney has been employed by the UMWA International Union for nineteen years and her job duties consist of normal clerical duties with the majority of her time spent using a computer and keyboard. Ms. Mooney sustained a non-compensable injury at home on March 1, 2010, when she broke her left wrist. While Dr. Pollock was operating on the injured wrist, he also performed a left carpal tunnel procedure. Dr. Pollock attributed Ms. Mooney's carpal tunnel syndrome to her employment duties. The claims administrator denied Ms. Mooney's request for compensability of her left carpal tunnel syndrome. The Office of Judges affirmed the claim administrator's decision and held that there is insufficient evidence for the claim to be held compensable for occupationally caused carpal tunnel syndrome on the left side. Ms. Mooney

disagrees and asserts that her treating physician diagnosed carpal tunnel syndrome as an occupational disease, and since she has long time repetitive use of her hands, it is clear that the carpal tunnel syndrome resulted from the her employment duties.

The Office of Judges determined that Ms. Mooney has non-compensable risk factors that could contribute to carpal tunnel syndrome. The Office of Judges further determined and that Ms. Mooney was not exposed to temperature extremes, vibratory tools, awkward wrist positioning, or high-force repetitive manual movements in her employment. The Office of Judges found that Dr. Pollock initially related Ms. Mooney's carpal tunnel syndrome to her work on the report of injury, but then specifically attributed it to the fracture in his progress notes on June 11, 2010. Therefore, the Office of Judges concluded that there is no medical evidence that Ms. Mooney's carpal tunnel syndrome is compensable and that based upon the preponderance of the evidence, Ms. Mooney's employment duties do not support a finding of an occupational cause for her carpal tunnel syndrome. The Board of Review reached the same reasoned conclusions in its decision of April 20, 2012. 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: January 16, 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