

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

January 14, 2014

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

**EVELYN J. WRIGHT,
Claimant Below, Petitioner**

vs.) **No. 12-0669** (BOR Appeal No. 2046616)
(Claim No. 2011036222)

**SUMMERSVILLE REGIONAL MEDICAL CENTER,
Employer Below, Respondent**

MEMORANDUM DECISION

Petitioner Evelyn J. Wright, by Reginald Henry, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Summersville Regional Medical Center, by Toni Minner, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated May 2, 2012, in which the Board affirmed a November 10, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's April 19, 2011, decision rejecting Ms. Wright's application 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. Wright filed an application for workers' compensation benefits alleging that she suffered an asthma exacerbation following exposure to airborne debris while working as a nurse during ongoing construction at Summersville Regional Medical Center in late March of 2011. On April 4, 2011, Ms. Wright presented at the Summersville Regional Medical Center Emergency Room complaining of a cough and sore throat four days in duration and was diagnosed with pneumonia. Chest x-rays obtained on the same date revealed no acute chest pathology and no change when compared to x-rays taken on June 24, 2010. On April 6, 2011,

Ms. Wright told her treating physician, Dr. Wantz, that she was exposed to a heavily perfumed individual the week before and that she then suffered a severe coughing episode. On April 10, 2011, while Ms. Wright was hospitalized for an asthma exacerbation, she was examined by Dr. Greenberg who noted that Ms. Wright had been complaining of shortness of breath for the past week. On April 15, 2011, Dr. Wade evaluated Ms. Wright and noted that she complained of increasing shortness of breath following the commencement of construction on the hospital ward where she was regularly employed. On April 19, 2011, the claims administrator rejected Ms. Wright's application for workers' compensation benefits. On September 13, 2011, Dr. Fino performed a records review and noted that Ms. Wright had been treated for asthma before any workplace exposure occurred. He then stated that based on Ms. Wright's medical record, she did suffer an exacerbation of her underlying asthma. However, he found that based on her symptoms upon presentation at the emergency room on April 4, 2011, she had an upper respiratory infection, which is a common cause of worsening asthma. He then stated that Ms. Wright's medical record does not document any causal connection between the hospital construction and her worsening asthma. In its Order affirming the April 19, 2011, claims administrator's decision, the Office of Judges held that Ms. Wright did not sustain an injury in the course of her employment.

The Office of Judges relied on the opinion of Dr. Fino, and took note of his finding that Ms. Wright's asthma exacerbation is attributable to an upper respiratory infection. The Office of Judges further took note of Dr. Fino's finding that there is no causal relationship between the hospital construction and Ms. Wright's worsening asthma. The Office of Judges then found that the evidence of record does not establish that Ms. Wright's asthma exacerbation was caused by the hospital construction. The Board of Review reached the same reasoned conclusions in its decision of May 2, 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 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