

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

MAGGIE B. CONNER, Petitioner

May 29, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 100669 (BOR Appeal No. 2043418)
(Claim No. 2008044034)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
KANAWHA COUNTY BOARD OF EDUCATION,
Respondent

MEMORANDUM DECISION

Petitioner Maggie B. Conner, by John Skaggs, her attorney, appeals the West Virginia Workers' Compensation Board of Review's Order denying compensability of the claim. The West Virginia Office of Insurance Commissioner, by Anna Faulkner, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated April 26, 2010, in which the Board affirmed a July 20, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's December 22, 2008, Order which denied compensability of an occupational disease. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this matter is appropriate for consideration under the Revised Rules. Having considered the petition and the relevant decision of the lower tribunal, the Court is of the opinion that the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the Court determines that there is no prejudicial error. This case does not present a new or significant question of law. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

In this case, Ms. Conner worked as a painter and maintenance worker for the Kanawha County Board of Education. In 2004 she stopped working due to lower back pain, and was

subsequently diagnosed with non-Hodgkin's lymphoma. The claims administrator denied the application for occupational disease on December 22, 2008.

The Office of Judges held that the record did not support a causal connection between Ms. Conner's employment and her condition. Ms. Conner disagrees and asserts that it was wrong to deny compensability of non-Hodgkin's lymphoma as an occupational disease caused by exposure to solvents during her employment as a painter. She argues that the record made it clear that she suffers from an occupational disease.

In its Order affirming the claims administrator's Order denying compensability of an occupational disease, the Office of Judges found the record did not support a causal connection between Ms. Conner's occupation and her condition. The Office of Judges noted that the only medical report of record, the report of Dr. Martin, indicated that there was no clearly proven cause for non-Hodgkin's lymphoma. It further noted that Dr. Martin clearly discussed the only evidence supporting a causal connection, the report of Dr. Guberman, but did not support Dr. Guberman's findings. The Board of Review reached the same reasoned conclusion in its Order of April 26, 2010.

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 April 26, 2010, Board of Review Order is affirmed.

Affirmed.

ISSUED: May 29, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh