

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

NANCY R. PHARIS,
Claimant Below, Petitioner

vs.) No. 100793 (BOR Appeal No. 2043761)
(Claim No. 2004017633)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER,
Commissioner Below, Respondent

and

CGP FOODS, INC.,
Employer Below, Respondent

FILED

June 9, 2011

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

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated June 3, 2010, in which the Board affirmed an October 8, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's November 26, 2008 denial of Ms. Pharis's request for a right knee replacement. The appeal was timely filed by the petitioner, and a response was filed by West Virginia Office of Insurance Commissioner. 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, the Court is of the opinion that this case is appropriate for consideration under the Revised Rules. Having considered the parties' submissions 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.

The Board of Review affirmed the denial of Ms. Pharis's request for a right knee

replacement. In support of her claim for the replacement, Ms. Pharis argues that her treating physician, Dr. Lucas Pavlovich, related her need for a right knee replacement to her compensable injury.

Dr. ChaunFang Jin also evaluated Ms. Pharis, however, and Dr. Jin found that Ms. Pharis's need for a knee replacement is due to her preexisting degenerative arthritis. Ms. Pharis sustained two previous knee injuries and had been diagnosed with osteoarthritis of the right knee prior to the subject injury. Indeed, Dr. Pavlovich admitted that Ms. Pharis is currently diagnosed with osteoarthritis and that her arthritis preexisted the injury. The Office of Judges thus found Dr. Pavlovich's testimony insufficient to establish a causal connection between Ms. Pharis's need for a knee replacement and the injury in this claim. In sum, the Office of Judges stated "[i]f the need for a right knee replacement is present, this need is derived from the claimant's preexisting degenerative changes and her osteoarthritis diagnosis previously." (Oct. 8, 2009 Office of Judges Order, p. 5.) The Board of Review reached the same reasoned conclusion in affirming the Office of Judges in its decision of June 3, 2010.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of constitutional or statutory provision, clearly the result of erroneous conclusions of law, or is based upon the Board's material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the denial of the petitioner's request for a right knee replacement is affirmed.

Affirmed.

ISSUED: June 9, 2011

CONCURRED IN BY:

Chief Justice Margaret Workman

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Thomas E. McHugh

DISSENTING:

Justice Menis E. Ketchum