

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

ROCHELLE BARKER,
Claimant Below, Petitioner

vs.) No. 100799 (BOR Appeal No. 2043881)
(Claim No. 2009070027)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER,
Commissioner Below, Respondent

and

DOLGENCORP, 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 2, 2010, in which the Board affirmed a November 30, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's October 8, 2008 denial of Ms. Barker's application for benefits. The claims administrator found that Ms. Barker's injury did not arise out of or in the course and scope of her employment. The appeal was timely filed by the petitioner. 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 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.

The Board of Review affirmed the denial of Ms. Barker's request for benefits. Ms. Barker asserts that she injured her shoulder while moving stock at work. She claims that the record is clear that she sustained an injury in the course of and as a result of her employment due to the fact that she noticed pain at the time she was pulling stock from high shelves.

The Office of Judges, however, found Ms. Barker's credibility to be lacking. First, Ms. Barker provided two different time periods during which the injury allegedly occurred. Moreover, Employer utilizes a surveillance camera to film the stock room in which Ms. Barker's injury allegedly occurred. Although Ms. Barker claims that her injury occurred out of the camera's view, Ms. Barker returned to the store following her injury and described for her manager exactly where and how the injury occurred. Ms. Barker's reenactment of the injury is clearly visible on the surveillance video, which suggests that her injury should have been captured on film. Finally, Ms. Barker asserts that her manager was standing beside her when she was injured; however, the manager does not corroborate this. The Office of Judges therefore found that Ms. Barker failed to establish that she was injured in the course of and as a result of her employment. The Board of Review reached the same reasoned conclusion in affirming the Office of Judges in its decision of June 2, 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 workers' compensation benefits is affirmed.

Affirmed.

ISSUED: June 9, 2011

CONCURRED IN BY:

Chief Justice Margaret Workman
Justice Robin E. Davis
Justice Brent D. Benjamin
Justice Menis E. Ketchum
Justice Thomas E. McHugh