

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

July 21, 2011

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

**MINDA K. BESS,
Claimant Below, Petitioner**

**vs.) No. 100808 (BOR Appeal No. 2043857)
(Claim No. 2007220632)**

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER,
Commissioner Below, Respondent**

and

**THE HOMER LAUGHLIN CHINA COMPANY,
Employer Below, Respondent**

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 denial of reopening for temporary total disability, medical treatment, and authorization of medical codes disc prolapse, radiculopathy, and stenosis. The appeal was timely filed by the petitioner and a response was filed by the Homer Laughlin China Company. 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, response, 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 matter the Office of Judges determined Ms. Bess' request for reopening for temporary total disability, medical treatment, and additional medical codes, disc prolapse, radiculopathy, and stenosis. Ms. Bess asserts the request for reopening for temporary total disability, medical treatment and additional medical codes is appropriate as the instant requests are related to a worsening or progression of her compensable injury. Additionally, Ms. Bess states the Office of Judges failed to fully consider the opinions of Dr. Thomas in determining the appropriateness of the instant requests. The Homer Laughlin Company asserts Ms. Bess has made no medical showing that she suffered from a progression of her condition and also has a history of degenerative changes. Further, the medical report of Doctor Victoria Langa contains no evidence of a progression of Ms. Bess' condition.

In holding Ms. Bess was not entitled to a reopening of her claim the Office of Judges in its Order noted the opinions of Dr. Thomas in which he attributed the worsening of Ms. Bess' condition to working with the injury caused a further progression of the compensable condition not credible. (November 30, 2009 Office of Judges Order, p. 12). It further found Ms. Bess' current condition related solely to the pre-existing degenerative disc disease and not a worsening of the compensable condition. *Id.*, p. 13. Additionally, it noted Ms. Bess previously suffered a lumbar injury in 1994, some inconsistencies related to the date of injury for this claim, an additional work-related fall and lower back injury on March 18, 2009 for which a new application for benefits was not filed. *Id.*, p. 11. The Office of Judges, too, found no basis for further award or for disputing the Claims Administrator's findings. 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 reopening for temporary total disability, medical benefits, and additional medical codes, disc prolapse, radiculopathy, and stenosis is affirmed.

Affirmed.

ISSUED: July 21, 2011

CONCURRED IN BY:

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