

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

July 21, 2011

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

**MARY FLANAGAN,
Claimant Below, Petitioner**

**vs.) No. 100920 (BOR Appeal No. 2044162)
(Claim No. 2009072611)**

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

and

**CSX Hotels, Inc.,
Employer Below, Respondent**

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated June 28, 2010, in which the Board affirmed a February 4, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's denial of non-medical benefits for occupational pneumoconiosis. The appeal was timely filed by the petitioner and a response was filed by CSX Hotels, Inc. 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 its Order the Office of Judges held the Petitioner failed to present any evidence that she was exposed to dust sufficient for a diagnosis of occupational pneumoconiosis. Ms. Flanagan disputes this finding and asserts the relevant medical records indicate she suffers from occupational pneumoconiosis and her relevant employment history supports this findings. Ms. Flanagan further asserts her daily exposure to various cleaning agents caused a worsening and progression of her pre-existing chronic obstructive pulmonary disease sufficient for a finding that she suffers from occupational pneumoconiosis. CSX Hotels, Inc. asserts Ms. Flanagan has failed to make the required showing that her employment caused her breathing issues and/or resulted in a worsening of a pre-existing condition. CSX Hotels, Inc. further asserts Ms. Flanagan's claim is more properly brought against Ms. Flanagan's prior employers based upon her own documented work history of exposure to minute particles of dust in that employment.

In its Order affirming the Claim's Administrator's denial of non-medical benefits for occupational pneumoconiosis the Office of Judges noted Petitioner was statutorily required to file her claim within a statutorily provided time period otherwise Ms. Flanagan is not entitled to worker's compensation benefits. (February 4, 2010 Office of Judges Order, p. 5). It further noted the evidence on record including the medical records, testimony of Ms. Flanagan, and the independent report of Industrial Hygienist, James D. McIntosh, do not support Ms. Flanagan's assertion that the cleaning chemicals resulted in a sufficient exposure for a finding of occupational pneumoconiosis. *Id.*, p. 6. It further opined there was no persuasive evidence in the record showing Ms. Flanagan was exposed to hazardous quantities of dust while working for CSX Hotels, Inc. The Office of Judges, too, found no basis for non-medical benefits related to occupational pneumoconiosis, or for disputing the Claims Administrator's findings. The Board of Review reached the same reasoned conclusions in affirming the Office of Judges in its decision of June 28, 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 non-medical benefits related to occupational pneumoconiosis 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