

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

BARBARA L. HUGHES-TERRY,
Claimant Below, Petitioner

vs.) No. 100992 (BOR Appeal No. 2044303)
(Claim No. 2009057602)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER,
Commissioner Below, Respondent

and

VALLEY HEALTH SYSTEMS, INC.,
Employer Below, Respondent

FILED

July 29, 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 July 15, 2010, in which the Board affirmed a March 12, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's July 14, 2009 Order, which closed Ms. Hughes-Terry's claim on a temporary total disability basis. The appeal was timely filed by the petitioner, and Valley Health Systems, Inc. filed a response. 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 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 Office of Judge's Order, which closed Ms. Hughes-Terry's claim on a temporary total disability basis due to the finding that she had

reached maximum medical improvement. Ms. Hughes-Terry argues that the Board of Review erred in concluding that West Virginia Code § 23-4-7a authorizes the termination of temporary total disability benefits once a claimant has reached maximum medical improvement. Ms. Hughes-Terry also notes that, despite the fact that she was found to have reached maximum medical improvement, she has continued to receive treatment from her treating physician in an attempt to improve her condition.

The Office of Judges noted first that West Virginia Code § 23-4-7a does, in fact, provide that temporary total disability benefits shall be suspended upon a finding that a claimant has reached maximum medical improvement, upon the claimant's release to return to work, or upon the claimant's return to work. (Mar. 12, 2010 Office of Judges Order, p. 4.) Dr. Luis Loimil, in his May 4, 2009 report, determined that Ms. Terry-Hughes had reached maximum medical improvement with respect to her compensable condition. *Id.* at p. 2.

Dr. Loimil also observed preexisting degenerative changes in Ms. Terry-Hughes's thoracic and lumbar spine, which produced residual pain. *Id.* Ms. Terry-Hughes sustained a previous injury to her cervical spine, for which she was awarded a 7% permanent partial disability award. Based upon Dr. Loimil's finding of maximum medical improvement, the Office of Judges affirmed the claims administrator's order terminating temporary total disability benefits. *Id.* at p. 5. Finally, Ms. Terry-Hughes's treating physician, Allen Young, M.D., has found that, although Ms. Terry-Hughes may not return to her former position, she may return to work. *Id.* at p. 3.

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 based upon the Board's material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the closure of Ms. Terry-Hughes's claim on a temporary total disability basis is affirmed.

Affirmed.

ISSUED: July 29, 2011

CONCURRED IN BY:

Chief Justice Margaret Workman

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Thomas E. McHugh

DISSENTING:

Justice Menis E. Ketchum