

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

HEIDI M. BROWN,
Claimant Below, Petitioner

vs.) No. 100993 (BOR Appeal No. 2043942)
(Claim No. 2004024306)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER,
Commissioner Below, Respondent

and

CSX HOTELS, 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 9, 2010, in which the Board affirmed a December 21, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's October 22, 2008 Order, which denied authorization for the medications Naproxen and Lidoderm patches. The appeal was timely filed by the petitioner, and CSX Hotels, 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 denied authorization for the medications Naproxen and Lidoderm patches. Ms. Brown argues that

her treating physician, with whom office visits have been authorized, relates the need of these medications to her compensable lumbar spine sprain, which occurred on November 16, 2003. Ms. Brown also notes that Dr. George Orphanos, who conducted an independent medical examination of Claimant on August 24, 2004, recommended anti-inflammatory medication. Finally, Ms. Brown argues that the fact that she was awarded a 5% permanent partial disability award represents an acknowledgment that she has suffered a permanent injury that will necessitate treatment.

The Office of Judges noted first that Ms. Brown underwent a lumbar spine MRI shortly after her compensable injury, on January 20, 2004. (Dec. 21, 2009 Office of Judges Order, p. 4.) This MRI revealed degenerative facet disease and minor disc bulging, both of which are not compensable conditions. *Id.* Following review of Ms. Brown's medical records, the Office of Judges concluded that "[t]here is no indication that her compensable injury causes her to continue to need anti-inflammatory medications such as Naproxen or Lidoderm patches for the continued pain." *Id.* at p. 5. Indeed, Ms. Brown's request for these medications was made more than five years after she sustained her soft tissue injury. West Virginia Code of Rules § 85-20-37.5 estimates that the duration of care for a lumbar spine sprain / strain is not to exceed eight weeks.

Finally, with respect to Dr. Orphanos's recommendation that she take anti-inflammatory medication, it is noted that this recommendation was made more than four years prior to her subject request for authorization. Due to both the lack of evidence relating her need for anti-inflammatory medications to her lumbar sprain that occurred in November 2003 and her diagnosis of non-compensable degenerative facet disease, the Office of Judges affirmed the denial of authorization for Naproxen and Lidoderm patches. The Board of Review reached the same reasoned conclusion in affirming the Office of Judges in its July 9, 2010 decision.

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 denial of authorization for the medications Naproxen and Lidoderm patches 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