

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

JUDITH A. MULLINS,
Claimant Below, Petitioner

August 5, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 101062 (BOR Appeal No. 2044070)
(Claim No. 20009056456)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER,
Commissioner Below, Respondent

and

CHARLESTON AREA MEDICAL CENTER,
Employer Below, Respondent

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated August 27, 2010, in which the Board affirmed a January 28, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's denial of compensability for acute bronchitis. The appeal was timely filed by the petitioner and a response was filed by the Charleston Area Medical Center. 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.

Ms. Mullins asserts she informed Charleston Area Medical Center of a childhood reaction to the Tetanus Diphtheria and Pertussis shot and a potential latex allergy prior to receiving the Tdap vaccination. After receiving the vaccination Ms. Mullins was admitted to the hospital for treatment of acute bronchitis, which she attributes to administration of the vaccination. Charleston Area Medical Center asserts Ms. Mullins presented insufficient evidence tying the acute bronchitis to the vaccination, did not indicate any vaccination sensitivity in her application for employment, and only mentioned a possible latex sensitivity at the time of the vaccination.

In its Order denying compensability for the acute bronchitis the Office of Judges noted Ms. Mullins thirty year history of smoking, history of respiratory complaints, and the testimony regarding childhood reaction to vaccinations. (January 24, 2010 Office of Judges Order, p. 6). The Order further found “[w]hat is missing from the proffer of evidence by the claimant is satisfactory medical confirmation of the relationship between the claimant’s complaints of July 31, 2008 to her Tdap vaccination.” *Id.* It further held there was insufficient medical evidence linking the administration of the vaccination to the symptoms requiring hospitalization. *Id.*, p. 7. The Office of Judges, too, found no basis for a finding of compensability or for disputing the Claims Administrator’s findings. The Board of Review reached the same reasonable conclusion in affirming the Office of Judges in its decision of August 27, 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 compensability for acute bronchitis is affirmed.

Affirmed.

ISSUED: August 5, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Menis E. Ketchum

Justice Thomas E. McHugh