

**STATE OF WEST VIRGINIA**

**SUPREME COURT OF APPEALS**

**FILED**

**CARON D. BAILEY,**  
**Claimant Below, Petitioner**

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

**vs.) No. 101064 (BOR Appeal No. 2044149)**  
**(Claim No. 2004017344)**

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

**and**

**BYKOTA, INC.,**  
**Employer Below, Respondent**

**MEMORANDUM DECISION**

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated July 27, 2010, in which the Board affirmed a February 16, 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 syringomyelia. The appeal was timely filed by the petitioner and a response was filed by the Office of Insurance Commissioner. 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. Bailey asserts the Office of Judges and Board of Review improperly denied authorization of syringomyelia as a compensable component of her claim. In support, Ms. Bailey asserts her treating physician, Dr. John Brick, opined the syringomyelia was another compensable injury caused by the motor vehicle accident and Ms. Bailey's own testimony regarding the asymptomatic nature of her condition prior to the accident. The Office of Insurance Commissioner responded on behalf of Ms. Bailey's Employer, Bykota, Inc. It argues the Office of Judges and Board of Review properly denied compensability for the syringomyelia based upon Ms. Bailey's failure to present sufficient evidence that the condition was caused by her compensable accident. Additionally, Drs. Prasadarao Mukkamala, John Koay, and Shiv U. Navada opined the condition most likely pre-existed the instant compensable accident.

The Office of Judges determined Ms. Bailey appeared to suffer an injury during the automobile accident similar to her pre-existing Arnold-Chiari condition for which she previously received treatment and was asymptomatic at the time of the accident. (February 16, 2010 Office of Judges Order, p. 8). It further held Ms. Bailey failed to prove "[i]t (syringomyelia) either had to exist and, therefore, pre-exist, to be aggravated or it had to result from the injury. The claimant has failed to prove an aggravation as opposed to a symptom of a pre-existing condition itself. She also failed to prove the syringomyelia resulted from the trauma of injury." *Id.*, p. 9. The Office of Judges, too, found no basis for compensability, 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 July 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 of the condition, syringomyelia, is affirmed.

Affirmed.

ISSUED: August 5, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Robin J. Davis

Justice Thomas E. McHugh

DISSENTING:

Justice Brent D. Benjamin

Justice Menis E. Ketchum