

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

REDITH J. BROWNING,
Petitioner

vs.) No. 101121 (BOR Appeal No. 2044141)
(Claim No. 2009057377)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
EPY'S IV, INC., Respondent

FILED
October 26, 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 August 10, 2010, in which the Board affirmed a February 12, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's September 12, 2008, Order, which rejected Ms. Browning's application for carpal tunnel syndrome benefits. The appeal was timely filed by the petitioner, and Epy's IV, 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 rejected Ms. Browning's application for benefits. Ms. Browning argues that a preponderance of the evidence establishes that she has carpal tunnel syndrome and that the Board of Review erred in rejecting Dr. Bruce A. Guberman's opinion that attributed her carpal tunnel syndrome to her employment with Epy's IV, Inc.

The Office of Judges, however, relied upon the reports of Dr. Paul Bachwitt and Dr. Prasadarao Mukkamala, which both found that Ms. Browning's carpal tunnel syndrome, if any, is not attributable to her employment. (Feb. 12, 2010, Office of Judges Order, p. 7.) These doctors noted that nearly two years elapsed following her retirement before Ms. Browning filed a claim for benefits. *Id.* The doctors stated that this length of time away from work should have relieved any carpal tunnel syndrome symptoms she was suffering. *Id.* at pp. 7-8.

Furthermore, both Drs. Bachwitt and Mukkamala stated that Ms. Browning's former employment duties, which were clerical in nature, are not of the type that cause carpal tunnel syndrome. *Id.* at p. 8; *see also* W. Va. Code R. § 85-20-41.5 ("Studies have failed to show a relationship between normal clerical activities and CTS.") Accordingly, the Office of Judges affirmed the rejection of Ms. Browning's application for benefits, and the Board of Review reached the same reasoned conclusion in affirming the Office of Judges in its August 10, 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 rejection of Ms. Browning's application for carpal tunnel syndrome benefits is affirmed.

Affirmed.

ISSUED: October 26, 2011

CONCURRED IN BY:

Chief Justice Margaret Workman

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Menis E. Ketchum

Justice Thomas E. McHugh