

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

CHRISTINE HODGES, Petitioner

vs.) No. 101135 (BOR Appeal No. 2044255)
(Claim No. 2008044994)

FILED

October 26, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER, and
GENESIS HEALTHCARE CORPORATION,
Respondent**

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated September 3, 2010, in which the Board reversed a February 23, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the claims administrator's June 17, 2006, Order, which denied authorization for right shoulder acromioplasty or acromionectomy, partial, with or without coracoacromial ligament release and claviclectomy, partial. The appeal was timely filed by the petitioner, and Genesis Healthcare Corp. 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 reversed the Office of Judge's Order and denied authorization for shoulder surgery. Ms. Hodges argues that, despite Dr. P. B. Mukkamala's finding that she had reached maximum degree of medical improvement, her treating physician, Dr. Robert McCleary, is in the best position to determine her need for surgery.

The Board of Review first noted the sole MRI of record dated June 20, 2008. (Sept. 3, 2010, Board of Review Order, p. 2.) This imaging found only minor degenerative changes. *Id.* There was no evidence of internal derangement. *Id.* Dr. McCleary also stated that Ms. Hodges's shoulder injury "is more of a therapy issue, since this is muscular and myofascial at this point." *Id.* Although a later note from Dr. McCleary states that an "MRI examination shows the AC joint arthropathy [and] type 2 acromion . . . with impingement," no such MRI is found in the record. *Id.* at p. 3. Further, on March 3, 2009, Dr. Mukkamala found that Ms. Hodges had reached maximum degree of medical improvement and did not recommend any surgery.

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 so clearly wrong based upon the evidentiary record that even when all inferences are resolved in favor of the board's findings, reasoning, and conclusions, there is insufficient support to sustain the decision. Therefore, the denial of authorization for right shoulder surgery is affirmed.

Affirmed.

ISSUED: October 26, 2011

CONCURRED IN BY:

Chief Justice Margaret Workman

Justice Robin Jean Davis

Justice Thomas E. McHugh

DISSENTING:

Justice Brent D. Benjamin

Justice Menis E. Ketchum