

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

KELLI D. JACKSON, Petitioner

November 15, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 101200 (BOR Appeal No. 2044102)
(Claim No. 2008039685)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
LITTLE GENERAL STORE, INC., Respondent

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated August 24, 2010, in which the Board affirmed a January 20, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's April 21, 2009, decision not to reopen Ms. Jackson's claim for temporary total disability benefits. The appeal was timely filed by the petitioner and a response was filed by the Employer. 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 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.

In its Order, the Office of Judges found that Ms. Jackson failed to demonstrate that the herniated disc from which she now suffers is related to her compensable injury of March 28, 2008. Ms. Jackson disputes this finding and asserts that, per the opinions of Dr. Green and Dr. Patel, she still has symptoms as a result of her compensable injury. Ms. Jackson also asserts that Dr. Patel found that her symptoms were worsening.

The Office of Judges relied on W. Va. Code § 23-4-1c, which provides that a claimant must prove through medical evidence that her inability to return to employment is due to a compensable injury. The Office of Judges also relied on W. Va. Code § 23-4-7a, which provides that temporary total disability benefits will not be paid after the claimant has reached maximum medical improvement or has returned to work. The Office of Judges also found that following the compensability of cervical sprain, thoracic sprain, and lumbar sprain, Ms. Jackson underwent an MRI on May 2, 2008, which did not reveal a disc herniation, but that a February 23, 2009, MRI showed a disc herniation, and that her known congenital spinal conditions, which include scoliosis and kyphosis, could easily explain the subsequent disc herniation. Additionally, the record indicates that Ms. Jackson has been unemployed since April 25, 2008, and that she remained unemployed at the time evidence of a disc herniation was revealed. The Board of Review reached the same reasoned conclusion in its decision of August 24, 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 to reopen her claim for temporary total disability benefits is affirmed.

Affirmed.

ISSUED: November 15, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Thomas E. McHugh

DISSENTING:

Justice Menis E. Ketchum