

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

JACKIE REA, Petitioner

December 9, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 101288 (BOR Appeal No. 2044308)
(Claim No. 2008039997)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
RITE AID OF WEST VIRGINIA, INC., Respondent

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated September 2, 2010, in which the Board affirmed a February 23, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the Claims Administrator's April 29, 2008, Order denying compensability of the claim. The appeal was timely filed by the petitioner and a response was filed by Rite Aid of West Virginia. 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.

The Board of Review affirmed the holding that the claimant failed prove by a preponderance of the evidence that she sustained a compensable injury on her back on April 14, 2008. Ms. Rea argues that her testimony coupled with a witness's testimony and a report from her treating physician was sufficient to prove that she sustained a compensable injury while at work.

In denying compensability of the claim, the Office of Judges noted several problems in the record. The application for benefits, correspondence from the claimant and the claimant's testimony differ on whether the injury occurred on April 14 or April 16, 2008. (February 23, 2010, Office of Judges Order, p. 5). Additionally, the Office of Judges noted differences in the claimant's testimony and the witness's testimony on the details of the incident. *Id.* The Office of Judges also mentions the presence of degenerative changes in reaching the conclusion that the preponderance of the evidence failed to establish a compensable injury. The Board of Review reached the same reasoned conclusion in affirming the Office of Judges in its decision of September 2, 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 Board of Review's September 2, 2010, Order is affirmed.

Affirmed.

ISSUED: December 9, 2011

CONCURRED IN BY:

Chief Justice Margaret Workman

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Menis E. Ketchum

Justice Thomas E. McHugh