

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER, Petitioner**

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

**vs.) No. 101289 (BOR Appeal No. 2044196)
(Claim No. 2002008427)**

**PHALA L. JOHNSTON, and WEST VIRGINIA
WESLEYAN COLLEGE, Respondent**

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated August 3, 2010, in which the Board affirmed a February 24, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the Claims Administrator's March 3, 2008, Order which denied a reopening application. The appeal was timely filed by the West Virginia Office of Insurance Commissioner and a response was filed by West Virginia Wesleyan College. 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 was entitled to a reopening of her claim due to an aggravation of a previous injury. The West Virginia Office of Insurance Commissioner argues that because the injury was the result of a definite, isolated, fortuitous event it was a new injury under the new employer and the reopening application should have been denied.

In holding that Ms. Johnston's claim was entitled to a reopening, the Office of Judges relied on the opinion of the treating physician, Dr. Lefebure. The Office of Judges noted the treating physician's records, diagnostic testing and the claimant's testimony all support the finding that the claimant's condition was aggravated. (February 24, 2010, Office of Judges Order, p. 9). It further noted the lack of persuasive evidence indicating the claimant suffered from a new injury as the petitioner argues. *Id.* The Board of Review reached the same reasoned conclusions in affirming the Office of Judges in its decision of August 3, 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 reopening of Ms. Johnston's claim 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