

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

CHERYL A. LILLY, Petitioner

December 14, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 101337 (BOR Appeal No. 2044155)
(Claim No. 2009064519)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
BRAXTON COUNTY MEMORIAL HOSPITAL, INC.,
Respondent

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated September 29, 2010, in which the Board reversed a January 29, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the claims administrator's October 22, 2008, decision to deny Ms. Lilly's request to hold the diagnosis of bilateral carpal tunnel syndrome compensable. 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 reversing the Office of Judges, the Board of Review held that Ms. Lilly failed to present sufficient evidence to show that she developed carpal tunnel syndrome as a result of her employment. Ms. Lilly disputes this finding and asserts that three physicians have opined that she developed carpal tunnel syndrome as a result of her employment.

The Board of Review relied on W. Va. Code R. § 85-20 -41.5, which states:

Occupational groups at high risk for CTS have included grinders, butchers, grocery store workers, frozen food factory workers, manufacturing workers, dental hygienists, platers and workers with high force, high repetitive manual movement. The literature notes a high prevalence of concurrent medical conditions capable of causing CTS in persons with the syndrome, without regard to any particular occupation. Studies have failed to show a relationship between normal clerical activities and CTS. When evaluating CTS in this work setting, a careful search for other contributing factors is essential. Awkward wrist positioning, vibratory tools, significant grip force, and high force of repetitive manual movements have all been shown to contribute to CTS.

The Board of Review found that Ms. Lilly's job duties did not fall within any of the high risk categories proscribed in W. Va. Code R. § 85-20 -41.5 (2006), and that there was insufficient evidence to show that Ms. Lilly's carpal tunnel syndrome was a result of her employment.

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 decision of the Board of Review is affirmed.

Affirmed.

ISSUED: December 14, 2011

CONCURRED IN BY:

Justice Robin J. Davis
Justice Brent D. Benjamin
Justice Thomas E. McHugh

DISSENTING:

Chief Justice Margaret L. Workman
Justice Menis E. Ketchum