

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

KATHY A. COOK, Petitioner

March 29, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 101431(BOR Appeal No. 2044517)
(Claim No. 2009024111)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
FIRST CENTURY BANK, N.A., Respondent**

MEMORANDUM DECISION

Petitioner, Kathy A. Cook, by Phillip R. Amick, her attorney, appeals the Board of Review order denying compensability and temporary total disability for carpal tunnel syndrome. First Century Bank, N.A. (hereinafter "First Century"), by Steven K. Wellman, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated October 19, 2010, in which the Board reversed an April 21, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the claims administrator's Order denying Ms. Cook's request for compensability and temporary total disability benefits. 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, response, 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 held the preponderance of the evidence does not support a finding that Ms. Cook's carpal tunnel syndrome is work-related and compensable. Ms. Cook asserts the preponderance of the evidence supports a finding that her carpal tunnel syndrome is work-related since her employment duties involve repetitive tasks of preparing/typing documents, filing documents, making phone calls, carrying files, carrying boxes, using a computer, and counting money. Each of these activities has contributed to the development of carpal tunnel syndrome. The First Century Bank asserts the Board of Review properly denied Ms. Cook compensability and

temporary total benefits. Dr. Rebecca Thaxton performed a medical records summary and performed an evaluation under the Moore-Garg index table, which revealed Ms. Cook's employment places her in a safe risk category for acquiring work-related carpal tunnel syndrome.

The Office of Judges held the opinions of Dr. Muscari and Dr. Othman, finding Ms. Cook's carpal tunnel syndrome work-related, are persuasive in determining Ms. Cook's entitlement to benefits. "There is no evidence of record to indicate the opinions of Dr. Muscari and Dr. Othman are not reliable or credible. The record also established that [Ms. Cook] does not suffer from any medical condition that would contribute to the development of carpal tunnel syndrome." It further held the report of Dr. Thaxton, who did not examine Ms. Cook, does not constitute sufficient evidence to defeat Ms. Cook's claim. Based on this evidence, the Office of Judges found Ms. Cook suffered bilateral carpal tunnel syndrome in the course of and as a result of her employment.

The Board of Review held the substantial rights of the First Century Bank were prejudiced by the Office of Judges' finding that Ms. Cook's carpal tunnel syndrome is work-related. It held "[Ms. Cook's] job duties do not fall in the high risk categories. The Board concludes that there is insufficient evidence in this claim to show that [Ms. Cook's] carpal tunnel syndrome resulted from her employment." It then reversed the Office of Judges and held Ms. Cook's carpal tunnel syndrome is not work-related and denied compensability and temporary total disability benefits.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of any constitutional or statutory provisions, is not so clearly the result of erroneous conclusions of law, nor is it 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 Ms. Cook's request for compensability and temporary total disability for carpal tunnel syndrome is affirmed.

Affirmed.

ISSUED: March 29, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Thomas E. McHugh

DISSENTING:

Justice Margaret L. Workman