

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

LEONOR ELENA PUHER, Petitioner

March 26, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 101483 (BOR Appeal No. 2044559)
(Claim No. 930015924)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
WEST VIRGINIA UNIVERSITY HOSPITALS, INC.,
Respondent**

MEMORANDUM DECISION

Petitioner Leonor Elena Puher, pro se, appeals the decision of the Board of Review. The West Virginia Office of Insurance Commissioner, by Anna L. Faulkner, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated October 26, 2010, in which the Board affirmed a May 3, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's April 16, 2009, decision denying Ms. Puher's request to reopen the claim for the consideration of permanent 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 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 held that Ms. Puher's request to reopen the claim for permanent total disability benefits was time-barred pursuant to W. Va. Code § 23-4-16 (2005), and that Ms. Puher failed to file a timely application to reopen the claim. W. Va. Code § 23-4-16 concerns, among other things, the timeliness of a request to reopen a claim, and provides that "in any claim in which an award of permanent disability was made, any request must be made within five

years of the date of the initial award.” Ms. Puher’s initial permanent partial disability award was granted on March 18, 1994, and her request to reopen was dated November 3, 2008; therefore, her request to reopen was filed well beyond the five year time limit mandated by W. Va. Code § 23-4-16. The Board of Review reached the same reasoned conclusion in its decision of October 26, 2010.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of any constitutional or statutory provision, nor is it clearly the result of erroneous conclusions of law, nor is it based upon the Board’s material misstatement or mischaracterization of the evidentiary record. Therefore, the decision of the Board of Review is affirmed.

Affirmed.

ISSUED: March 26, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh