

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

April 12, 2012

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

JULIA R. LOEFFLER, Petitioner

**vs.) No. 101604 (BOR Appeal No. 2044392)
(Claim No. 2010117275)**

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
WEST VIRGINIA UNITED HEALTH SYSTEM,
Respondent**

MEMORANDUM DECISION

Petitioner Julia R. Loeffler, by Robert Stultz, her attorney, appeals the decision of the Board of Review. West Virginia United Health System, by Nathaniel Kuratomi, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated October 19, 2010, in which the Board reversed an April 7, 2010, Order of the Workers' Compensation Office of Judges holding the claim compensable for bilateral carpal tunnel syndrome. In its Order, the Office of Judges reversed the claims administrator's December 21, 2009, decision rejecting Ms. Loeffler's claim for bilateral carpal tunnel syndrome. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

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 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 found that Ms. Loeffler's job duties as Human Resources Director did not fall within the list of occupations considered at high risk for the development of carpal tunnel syndrome as listed in West Virginia Code of State Rules § 85-20-41.5 (2006). The Board of Review further found that there is insufficient evidence to show that Ms. Loeffler's carpal tunnel syndrome resulted from her employment. West Virginia Code of State Rules § 85-20-41.5 states:

Work Setting. 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 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 Moore-Garg Strain Index is a valuable tool for assessing risk for work-related CTS.

Although the Rule lists several occupations at high risk for the development of carpal tunnel syndrome, it does not preclude a claimant who is not engaged in a high risk occupation from prosecuting a carpal tunnel syndrome claim. Furthermore, there are two physician's reports in the record, both indicating that Ms. Loeffler developed carpal tunnel syndrome as a result of her employment. There is no evidence of record indicating that Ms. Loeffler's carpal tunnel syndrome is not related to her employment.

For the foregoing reasons, we find that the decision of the Board of Review is based upon a material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the decision of the Board of Review is reversed and the claim is remanded to the Board of Review with the instruction to hold the claim compensable for bilateral carpal tunnel syndrome.

Reverse and remand.

ISSUED: April 12, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Margaret L. Workman

Justice Thomas E. McHugh

DISSENTING:

Justice Brent D. Benjamin