

**STATE OF WEST VIRGINIA**

**SUPREME COURT OF APPEALS**

**FILED**

**July 6, 2012**

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

**ROBIN L. FIELDS, Petitioner**

**vs.) No. 11-0034 (BOR Appeal No. 2044520)  
(Claim No. 2009081904)**

**WEST VIRGINIA OFFICE OF  
INSURANCE COMMISSIONER and  
KANAWHA COUNTY BOARD OF EDUCATION,  
Respondent**

**MEMORANDUM DECISION**

Petitioner Robin L. Fields, by Samuel Hanna, her attorney, appeals the West Virginia Workers' Compensation Board of Review's Order denying the petitioner's application for workers' compensation benefits. Kanawha County Board of Education, by H. Dill Battle, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated December 7, 2010, in which the Board affirmed a May 7, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's April 8, 2009, decision denying the application for benefits. 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 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 this case, Ms. Fields is a custodian with the Kanawha County Board of Education. She was allegedly injured on February 16, 2009, when she was moving bookcases. Ms. Fields was subsequently treated for lower back problems by Dr. Shawn Cottrell, DC, whom she had seen in the past for neck, shoulder, and lower back pain. The claims administrator, on April 8, 2009, denied the

application for workers' compensation benefits because the symptoms were related to a preexisting condition.

The Office of Judges, on May 7, 2010, affirmed the denial of the application for benefits based upon the report by Dr. Marsha Bailey, MD. Dr. Bailey, on January 15, 2010, noted that Ms. Fields had back pain for several years and received regular, consistent, and ongoing care for her symptoms. Ms. Fields disagrees and asserts that based upon the evidence, it is clear she suffered an occupational injury. Moreover, she argues that Dr. Cottrell concluded she suffered an injury on February 16, 2009, and as her treating physician he is in the best position to give such an opinion.

The Office of Judges, in reaching its decision to affirm the claims administrator's denial of the application for workers' compensation benefits, noted that Ms. Fields suffered from ongoing back pain preexisting the alleged work incident by at least seven years. The Office of Judges found Dr. Bailey's report to be the most comprehensive and persuasive report on the issue of whether the claim should be compensable. Ultimately, the Office of Judges concluded that the petitioner did not sustain an injury in the course of and as a result of her employment on February 16, 2009. The Board of Review reached the same reasoned conclusion in its decision of December 7, 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 a material misstatement or mischaracterization of the evidentiary record. Therefore, the Board of Review Order is affirmed.

Affirmed.

**ISSUED: July 6, 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