

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

June 27, 2012

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

KENNY NGUYEN (DECEASED), Petitioner

**vs.) No. 11-0092 (BOR Appeal No. 2044650)
(Claim No. 2009064850)**

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
HIBACHI OF SOUTHRIDGE, INC., Respondent**

MEMORANDUM DECISION

Petitioner Kenny Nguyen, by Patrick Maroney, his attorney, appeals the decision of the Board of Review. Hibachi of Southridge, by Robert Busse, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated December 15, 2010, in which the Board affirmed a May 17, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's November 4, 2008, decision denying compensability of the claim. 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.

Mr. Nguyen was a dishwasher with the Hibachi of Southridge restaurant. In the early morning hours of September 1, 2008, he collapsed while alone in the restaurant. He was found unconscious and unresponsive on the floor of the restaurant mid-morning on September 1, 2008. Mr. Nguyen was diagnosed with a massive intracerebral hemorrhage. On September 3, 2008, Mr. Nguyen expired; his cause of death was listed as a naturally occurring intracranial hemorrhage. The claims administrator held that Mr. Nguyen's manner of death was natural and not caused by a work-related activity.

Medical records for Mr. Nguyen with dates from March 9, 2004, to December 3, 2007, indicate that he consistently suffered from hypertension, which was identified by Dr. Jelic as a risk factor for intracerebral hemorrhage in the October 17, 2008, addendum to his autopsy report. On August 18, 2009, Dr. Mukkamala conducted a record review at the request of Hibachi of Southridge. Dr. Mukkamala also found that Mr. Nguyen's death was the result of an intracranial hemorrhage caused by uncontrolled hypertension of long duration.

In its Order affirming the claims administrator's decision, the Office of Judges held that Mr. Nguyen's death was not caused by an occupational injury or disease. Counsel for the petitioner asserts that Mr. Nguyen's intracerebral hemorrhage may have been the result of a head injury, because it is possible that Mr. Nguyen slipped and hit his head. Hibachi of Southridge asserts that there is no evidence of record indicating that Mr. Nguyen sustained any type of injury as a result of his employment, and that all of the evidence of record demonstrates that Mr. Nguyen's intracerebral hemorrhage resulted from uncontrolled hypertension.

Specifically, the Office of Judges found that Mr. Nguyen suffered from uncontrolled hypertension for an extended period of time, that there is no evidence in the medical record of trauma to any part of Mr. Nguyen's body, and that no medical evidence has been presented that would indicate that Mr. Nguyen's death was in any way work-related. The Board of Review reached the same reasoned conclusions in its decision of December 15, 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 decision of the Board of Review is affirmed.

Affirmed.

ISSUED: June 27, 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