

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

CHRYSTAL BJORK, Petitioner

July 17, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 11-0152 (BOR Appeal No. 2044814)
(Claim No. 2009058079)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
BECKLEY APPALACHIAN REGIONAL HEALTHCARE,
Respondent

MEMORANDUM DECISION

Petitioner Chrystal Bjork, by Reginald Henry, her attorney, appeals the West Virginia Workers' Compensation Board of Review's Order denying an additional compensable component. Beckley Appalachian Regional Healthcare, by H. Dill Battle III, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated December 22, 2010, in which the Board affirmed a July 1, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's July 16, 2009, decision denying cervical disc displacement as an additional compensable component. 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.

Ms. Bjork was working for Beckley Appalachian Regional Healthcare as a phlebotomist when she fell and injured her lower back on August 25, 2008. On September 18, 2008, the claims administrator held the claim compensable for a lumbar sprain. On May 21, 2009, Ms. Bjork began complaining of problems with her cervical spine. An MRI revealed that there was a small central disc protrusion at C3-4 and a large central and paracentral disc protrusion at C4-5. The treating

physician, Dr. Poling, requested central disc displacement be added as a compensable component in the claim. The claims administrator on July 16, 2009, denied the request for the additional compensable component.

The Office of Judges, in reaching its decision to affirm the claims administrator's denial of cervical disc displacement as a compensable component, held that the cervical injury did not occur in the course of and resulting from Ms. Bjork's employment. Ms. Bjork disagrees and asserts that the evidence is clear that the injury resulted from the August 25, 2008, accident. She relies on a statement from her treating physician that due to her reduced activities given her lumbar injury, it was hard to believe the cervical injury did not result from the workplace accident. Beckley Appalachian Regional Healthcare argues that there is a lack of objective medical evidence finding the cervical injury is the result of an occupational disease or injury. The Office of Judges noted that while there is no doubt Ms. Bjork has a cervical spine problem, it does not appear to be attributable to this claim.

In reaching the conclusion that the cervical disc displacement was not related to this claim, the Office of Judges considered several medical reports. The Office of Judges noted that Dr. Mukkamala pointed out that Ms. Bjork experienced a prior back problem without any real injury. Ultimately, the Office of Judges concluded that the cervical disc displacement was coincidental to the lumbar sprain treatment, and the evidence did not establish that the condition occurred in the course of and resulting from Ms. Bjork's employment. The Board of Review reached the same reasoned conclusion in its decision of December 22, 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 17, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Margaret L. Workman

Justice Thomas E. McHugh

Justice Brent D. Benjamin not participating