

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

SAMANTHA RHOADES, Petitioner

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

vs.) No. 11-0163 (BOR Appeal No. 2044825)
(Claim No. 2009090417)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
AMFM, INC., Respondent

MEMORANDUM DECISION

Petitioner Samantha Rhoades, by Robert Stultz, her attorney, appeals the West Virginia Workers' Compensation Board of Review's Order denying the application for workers' compensation benefits. AMFM, Inc., by Karin Weingart, 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 22, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's May 25, 2009, decision denying the application for workers' compensation 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. Rhoades was a certified nursing assistant with AMFM, Inc. She was allegedly injured on April 24, 2009, when she lifted a patient. Ms. Rhoades was subsequently treated for a shoulder, thoracic, and lumbar sprain/strain by Dr. LaBenne, whom she had seen in the past for similar problems. The claims administrator on May 25, 2009, denied the application for workers' compensation benefits because the disability was not due to an injury received in the course of and as a result of her employment.

The Office of Judges on July 22, 2010, affirmed the denial of the application for benefits based upon a lack of an evidentiary foundation demonstrating the injury was received in the course of and as a result of Ms. Rhoades's employment. Ms. Rhoades disagrees and asserts that she did in fact incur an injury in the course of and as a result of her employment with AMFM, Inc. Further, she argues that neither her delayed report of the injury, prior treatment by Dr. LaBenne, nor the existence of a preexisting condition defeat her application for workers' compensation benefits. AMFM, Inc. argues that the evidence establishes that Ms. Rhoades has had back and shoulder problems since 2004.

In reaching the conclusion to affirm the claims administrator's denial of the application for workers' compensation benefits, the Office of Judges noted that Dr. LaBenne's medical records document treatment for the cervical, thoracic, and lumbar spine prior to the alleged incident on April 24, 2009. The Office of Judges also noted that Ms. Rhoades failed to inform her employer of the incident despite needing time off due to symptoms of the alleged injury. It further noted a lack of clear intent expressed to Dr. LaBenne as to whether Ms. Rhoades would turn in the injury to workers' compensation. Ultimately, the Office of Judges concluded that the preponderance of the evidence did not establish that she suffered an injury in the course of and as a result of her 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