

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

FILED
November 19, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

BETTINA DAWSON, Petitioner

vs.) No. 11-0267 (BOR Appeal No. 2044909)
(Claim No. 2008031995)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
PLEASANTS CAREHAVEN OPERATING, Respondent**

MEMORANDUM DECISION

Petitioner Bettina Dawson, by George Zivkovich, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Pleasants Carehaven Operating, by Timothy E. Huffman, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated January 25, 2011, in which the Board affirmed an August 10, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's closing the claim for vocational rehabilitation. 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. 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. Dawson injured her back in February of 2008 when helping lift a patient from a wheelchair into a shower chair at the nursing home where she worked as a caregiver for more than 20 years. The claims administrator found the injury to be compensable. Ms. Dawson received tests and treatment for her lower back over the following months according to her vocational rehabilitation plan. The claims administrator closed the claim in December of 2008, but then reopened on March 5, 2009, for additional work rehabilitation.

On April 1, 2009, Ms. Dawson attended her vocational rehabilitation but the pain was still too much for her to continue. She could not continue participation in her vocational rehabilitation plan and suspended it until she was physically able. Before she could resume participation, however, the claim was closed. In the discussion section of its Order, the Office of Judges, did not address the claimant's inability to participate due to pain and only stated that "claimant declined to participate in her rehabilitation plan." The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges. The Office of Judges failed to consider whether it was possible for Ms. Dawson to attend the work rehabilitation program. The Board of Review erred in affirming the Office of Judges's incomplete findings of fact.

For the foregoing reasons, we find that the decision of the Board of Review is clearly the result of erroneous conclusions of law. Therefore, the decision of the Board of Review is reversed and this case is remanded with instructions to enter an Order granting Ms. Dawson authority to resume the vocational rehabilitation she began on April 1, 2009, as authorized by the claims administrator's Order of March 5, 2009.

Reversed and remanded.

ISSUED: November 19, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Brent D. Benjamin
Justice Margaret L. Workman

DISSENTING:

Justice Robin J. Davis
Justice Thomas E. McHugh