

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

September 14, 2012

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

PAMELA PAYNTER, Petitioner

vs.) No. 11-0333 (BOR Appeal No. 2044975)
(Claim No. 2009074485)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
WENDY'S INTERNATIONAL, INC., Respondent**

MEMORANDUM DECISION

Petitioner Pamela Paynter, by John Blair, her attorney, appeals the West Virginia Workers' Compensation Board of Review's Order denying workers' compensation benefits. Wendy's International, Inc., by Barney Frazier, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated January 26, 2011, in which the Board affirmed an August 5, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's February 5, 2009, decision denying the claim 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.

Ms. Paynter was working for Wendy's International, Inc. when she was allegedly injured while at work. After the accident she was given a saliva swab test, and subsequently drug tested at the hospital where she sought treatment. The claims administrator denied the claim for workers' compensation benefits on February 5, 2009.

The Office of Judges, in affirming the claims administrator's Order, held that the injury was self-inflicted due to Ms. Paynter's drug intoxicated condition. On appeal, Ms. Paynter

disagrees and asserts that the substances found in her system were for treatment of some of the conditions asserted in the claim, and that she suffered a definite, isolated fortuitous event on January 13, 2009, and should be entitled to workers' compensation benefits. Wendy's International, Inc. argues that no compensable injury occurred, because under West Virginia Code § 23-4-2(a) (2005), the injury was caused by her drug intoxicated state.

West Virginia Code § 23-4-2(a) provides:

[N]o employee or dependent of any employee is entitled to receive any sum from the Workers' Compensation Fund, from a self-insured employer or otherwise under the provisions of this chapter on account of any personal injury to or death to any employee caused by a self-inflicted injury or the intoxication of the employee.

The Office of Judges noted that the saliva swab test taken by Wendy's International, Inc. was positive for benzodiazepines and opiates. The evidence did not indicate these substances were being used for treatment of a condition. Thus, the Office of Judges concluded that under West Virginia Code § 23-4-2(a), Ms. Paynter was not entitled to workers' compensation benefits. The Board of Review reached the same reasoned conclusion in its January 26, 2011, Order.

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: September 14, 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