

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

October 17, 2012

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

DELORIS J. DILLON, Petitioner

vs.) No. 11-0357 (BOR Appeal No. 2044749)
(Claim No. 2009076830)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER, and
WAYNE COUNTY COMMISSION, Respondent**

MEMORANDUM DECISION

Petitioner Deloris J. Dillon, by Lawrence B. Lowry, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Wayne County Commission, by Matthew Williams, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated January 26, 2011, in which the Board reversed a June 17, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the claims administrator's denial of compensability for bilateral carpal tunnel syndrome. 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. Dillon works as a clerk at the Wayne County Commission where she has worked since 1994. Her work includes doing manual ink pad stamping on a repetitive basis, as well as frequent bilateral reaching and right hand finger movements. The Office of Judges reversed the claims administrator's denial of compensability by weighing all of the evidence and concluding that the evidence supports a finding that Ms. Dillon has CTS based on reports by a majority of the examining doctors and discounting a finding by Dr. Mukkamala based on criteria outside of guidelines in West Virginia Code of State Rules § 85-20-41, *et seq.* Additionally, the Office of

Judges found that a causal connection was adequately shown linking Ms. Dillon's injury with her employment, noting that "Dr. Mukkamala failed to lay an adequate foundation . . ." for his finding that the job responsibilities did not contribute to the development of bilateral CTS and that Dr. Dauphin did not base his finding of no causation upon a complete record.

In its Order reversing the Office of Judges, the Board of Review found that Ms. Dillon's job duties as Human Resources Director did not fall within the list of occupations considered at high risk for the development of carpal tunnel syndrome as listed in West Virginia Code of State Rules § 85-20-41.5 (2006). The Board of Review further found that there is insufficient evidence to show that Ms. Dillon's carpal tunnel syndrome resulted from her employment. West Virginia Code of State Rules § 85-20-41.5 states:

Work Setting. Occupational groups at high risk for CTS have included grinders, butchers, grocery store workers, frozen food factory workers, manufacturing workers, dental hygienists, platers and workers with high force, high repetitive manual movement. The literature notes high prevalence of concurrent medical conditions capable of causing CTS in persons with the syndrome, without regard to any particular occupation. Studies have failed to show a relationship between normal clerical activities and CTS. When evaluating CTS in this work setting, a careful search for other contributing factors is essential. Awkward wrist positioning, vibratory tools, significant grip force, and high force of repetitive manual movements have all been shown to contribute to CTS. The Moore-Garg Strain Index is a valuable tool for assessing risk for work-related CTS.

The Office of Judges acknowledged that this guide "fail[s] to suggest baseline criteria for what constitutes 'normal clerical activities[,]' and concluded that "[i]t is apparent . . . that [Ms. Dillon's] job responsibilities, in the preparation of documents for county recordation, involves specialized, uncommon repetitive upper extremities movements." The Board of Review did not address what constitutes "normal clerical activities" or explain its basis for finding no causation between Ms. Dillon's work and CTS.

For the foregoing reasons, we find that the decision of the Board of Review had insufficient support to sustain the decision that the Office of Judges was plainly wrong in its conclusions. Therefore, the decision of the Board of Review is reversed and the claim is remanded to the Board of Review with the instruction to hold the claim compensable for bilateral carpal tunnel syndrome.

Reversed and remanded.

ISSUED: October 17, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Margaret L. Workman

Justice Thomas E. McHugh

DISSENTING:

Justice Brent D. Benjamin