

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

October 17, 2012

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

BETTINA DAWSON, Petitioner

vs.) No. 11-0792 (BOR Appeal No. 2045262)
(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 May 9, 2011, in which the Board affirmed an October 28, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's Order denying a complete blood count ("CBC"), a complete metabolic panel ("CMC"), the medications Celexa and Roxerem, and lumbar epidural steroid injections. 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. 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 Board of Review affirmed the holdings of the Office of Judges and claims administrator that the petitioner failed to demonstrate that a complete blood count (“CBC”), complete metabolic panel (“CMC”), the medications Celexa and Rozerem, and lumbar epidural steroid injections are medically related and reasonably required for the treatment of her injury from February 18, 2008. The petitioner disagrees with these findings and relies upon her doctor’s testimony that the above treatments and medications were needed.

Two doctors, Drs. Thaxton and Mukkamala, testified that Ms. Dawson had reached maximal medical improvement, and that further treatment was needed only for a pre-existing degenerative disc disease. Dr. Shiramowiat, claimant’s treating physician, recommended the treatments. The Office of Judges found persuasive the testimony of Drs. Thaxton and Mukkamala, noting that no evidence was presented showing the requested treatment was needed for the compensable injury. The Board of Review reached the same reasoned conclusions in affirming the Office of Judges in its decision of January 25, 2011.

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 decision of the Board of Review is affirmed.

Affirmed.

ISSUED: October 17, 2012

CONCURRED IN BY:

Justice Robin J. Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh

DISSENTING:

Chief Justice Menis E. Ketchum