

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

April 19, 2013

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

DIANA L. CURTIS,
Claimant Below, Petitioner

vs.) No. 11-1013 (BOR Appeal No. 2045319)
(Claim No. 201017605)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER**
Commissioner Below, Respondent

and

HOMER LAUGHLIN CHINA CO.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Diana L. Curtis, by Patrick K. Maroney, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Homer Laughlin China Co., by Lucinda Fluharty, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated June 9, 2011, in which the Board affirmed a November 3, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's January 25, 2010, order. The Court has carefully reviewed the records, written arguments, and appendices contained in the briefs, and the case is mature for consideration.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Rules of Appellate Procedure.

Ms. Curtis was working at The Homer Laughlin China Company as a brusher/feeder on September 21, 2009, when she experienced pain and pressure in her lower abdominal area while pulling boards, turning the table, and lifting bungs of ware. Ms. Curtis had previously complained of a dropped bladder to a plant R.N. In his October 15, 2009, report, Dr. Parulkar reported that Ms. Curtis told him that she had been ongoing symptoms for a year with it getting worse the last three months.

In reaching the decision to affirm the claims administrator's order, the Office of Judges found that Ms. Curtis's work activities were not so unique as to have caused her condition and that Ms. Curtis had a disease of the general population that did not result from her employment. The Board of Review reached the same reasoned conclusion as the Office of Judges in its decision of June 9, 2011. We agree with the reasoning and conclusions of the Board of Review.

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: April 19, 2013

CONCURRED IN BY:

Chief Justice Brent D. Benjamin
Justice Robin J. Davis
Justice Margaret L. Workman
Justice Allen H. Loughry II

DISSENTING:

Justice Menis E. Ketchum