

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

June 12, 2013

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

SAMANTHA GREEN,
Claimant Below, Petitioner

vs.) No. 11-1296 (BOR Appeal No. 2045651)
(Claim No. 2010121642)

FIRE MOUNTAIN RESTAURANTS, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Samantha Green, by George Zivkovich, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review.

This appeal arises from the Board of Review's Final Order dated August 24, 2011, in which the Board affirmed a February 28, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's February 1, 2010, decision determining that Ms. Green's claim was not compensable. 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.

On December 27, 2009, Ms. Green sought treatment at St. Joseph's Hospital emergency room, complaining of back pain which had been ongoing for two months. Ms. Green was then seen by a chiropractor, Dr. Hale, complaining of sciatic nerve pain from her lower back to her foot. During her initial consultations with Dr. Hale, beginning on January 12, 2010, Ms. Green related her condition to an injury she received in October of 2008. In October of 2008, Ms. Green had fallen, in the course of her employment, and injured her knee, hand, and elbow. The claims administrator had held her claim compensable, but because she was absent from work for less than three days, it had determined that she was only eligible for necessary medical treatment and expenses. Ms. Green later told Dr. Hale that the injury to her lower back had occurred on

October 29, 2009, while working as a cook at Rally's Steakhouse, owned and operated by Fire Mountain Restaurants. Ms. Green stated that she had injured her back while lifting boxes at work. Ms. Green then filed an occupational injury report. Her claim was denied by the claims administrator on February 1, 2010, because there was no medical documentation demonstrating that she had a work-related injury. The claims administrator's decision was affirmed by the Office of Judges on February 28, 2011, and by the Board of Review on August 24, 2011, leading to this appeal.

The Office of Judges found that Ms. Green did not receive a personal injury in the course of and resulting from her employment at Fire Mountain Restaurants, Inc. In making its decision, the Office of Judges found that Ms. Green did not provide any persuasive evidence demonstrating that she had sustained a compensable injury. The Office of Judges found that Dr. Hale's report was inconsistent and did not relate Ms. Green's condition to a work-related injury. The Office of Judges also found that the reports from St. Joseph's Hospital from December 27, 2009, when Ms. Green initially sought treatment for her alleged injury, made no mention of a work-related injury but related Ms. Green's condition to a fall which occurred in 2008.

The Board of Review adopted the Office of Judges' findings and affirmed its Order on August 24, 2011. We agree with the conclusions of the Board of Review. Ms. Green has not presented sufficient evidence to demonstrate that she received a personal injury in the course of her employment.

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: June 12, 2013

CONCURRED IN BY:

Chief Justice Brent D. Benjamin

Justice Robin J. Davis

Justice Margaret L. Workman

Justice Menis E. Ketchum

Justice Allen H. Loughry II