

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

PATRICIA A. SUMMERS,
Claimant Below, Petitioner

FILED
January 14, 2014
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 12-0662 (BOR Appeal No. 2046631)
(Claim No. 2011026195)

MARION COUNTY BOARD OF EDUCATION,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Patricia A. Summers, by Robert Stultz, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. The Marion County Board of Education, by H. Dill Battle III, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated May 2, 2012, in which the Board affirmed a November 21, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's February 28, 2011, decision rejecting Ms. Summers's claim for workers' compensation benefits. 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 March 22, 2010, Ms. Summers was examined by Dr. Menez for worsening right shoulder pain. On November 22, 2010, Ms. Summers was examined by Dr. Thrush. She reported to Dr. Thrush that she had been experiencing pain in both shoulders, with the right being worse than the left. She did not report sustaining a specific injury. Dr. Thrush opined that she may have bilateral degenerative rotator cuff disease and a possible rotator cuff tear. A subsequent MRI revealed a full-thickness tear of the right rotator cuff, which was repaired by Dr. Post on December 17, 2010. On December 29, 2010, Ms. Summers filed a Report of Injury alleging that

she sustained a torn right rotator cuff as a result of a repetitive stress injury due to continually using her right arm in the course of her employment as a cook with the Marion County Board of Education. On February 25, 2011, Dr. Dauphin performed a records review and recommended denying the compensability of the claim based on a finding that it is more likely that her condition occurred as a result of the natural aging process. On February 28, 2011, the claims administrator rejected Ms. Summers's claim for workers' compensation benefits. In its Order affirming the February 28, 2011, claims administrator's decision, the Office of Judges held that Ms. Summers did not sustain an occupational injury or disease in the course of or resulting from her employment.

The Office of Judges found that Dr. Menez, Dr. Thrush, and Dr. Post did not attribute Ms. Summers's condition to her occupation in their treatment notes. The Office of Judges further found that Dr. Dauphin's opinion that Ms. Summer's condition is a result of the natural aging process is the most persuasive opinion of record given Ms. Summers's age and the fact that a traumatic occupational event did not occur. The Board of Review reached the same reasoned conclusions in its decision of May 2, 2012. 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: January 14, 2014

CONCURRED IN BY:

Chief Justice Robin J. Davis
Justice Menis E. Ketchum
Justice Allen H. Loughry II

DISSENTING:

Justice Margaret L. Workman

Justice Brent D. Benjamin, not participating