

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

**LETHA MARIE LONG RICE,
Claimant Below, Petitioner**

FILED
March 20, 2014
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 12-0855 (BOR Appeal No. 2046794)
(Claim No. 2010124928)

**MASON COUNTY BOARD OF EDUCATION,
Employer Below, Respondent**

MEMORANDUM DECISION

Petitioner Letha Marie Long Rice, by Edwin H. Pancake, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. The Mason County Board of Education, by Alyssa A. Sloan, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated June 29, 2012, in which the Board affirmed a December 16, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's February 26, 2010, rejection of the claim. 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. Rice has a significant history of chronic pain in her low back, hip, knee, and foot dating back to an automobile accident that occurred in 1975. Ms. Rice has received extensive treatment relating to these injuries. In regard to her current claim, Ms. Rice was working as a teacher for the Mason County Board of Education. She alleged that she injured her lower back on January 27, 2010, when she turned to catch a student that was running by her. Ms. Rice alleged that she experienced an increase of pain in her back, hip, and knee but did not seek immediate treatment. On February 16, 2010, an x-ray was taken of Ms. Rice's lumbar spine which showed disc space narrowing and degenerative changes at L4-5. Ms. Rice also sought

treatment from Gerald Vallee, M.D., who indicated that Ms. Rice's symptoms were chronic. He noted that Ms. Rice had degenerative arthritis and disc disease. On February 26, 2010, the claims administrator rejected Ms. Rice's application for workers' compensation benefits. On December 16, 2011, the Office of Judges affirmed the claims administrator's decision. The Board of Review affirmed the Order of the Office of Judges on June 29, 2012, leading Ms. Rice to appeal.

The Office of Judges concluded that Ms. Rice did not suffer an injury in the course of or as a result of her employment on January 27, 2010. The Office of Judges found that Ms. Rice had a long history of pain and injuries in her low back, hip, knee, and foot. The Office of Judges found that Ms. Rice's treating physician, Dr. Vallee, did not note an acute injury or diagnose her with an acute injury. The Office of Judges found that Dr. Vallee's treatment notes indicated that Ms. Rice experienced an increase of pain in her low back, hip, and knee pain. The Office of Judges also found that his treatment notes indicated that these were chronic conditions. The Office of Judges found that the record did not show that there was any significant change in Ms. Rice's condition and that she did not develop her symptoms as a result of her employment. The Board of Review adopted the findings of the Office of Judges and affirmed its Order.

We agree with the conclusions of the Board of Review and the findings of the Office of Judges. Ms. Rice has not demonstrated that she received an injury in the course of and resulting from her employment on January 27, 2010. The evidence in the record shows that Ms. Rice had significant prior injuries from which she continued to have chronic pain. There is no evidence in the record showing that she received a new injury or aggravated her prior conditions as a result 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: March 20, 2014

CONCURRED IN BY:

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