

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

DEBRA PETRICHKO,
Claimant Below, Petitioner

FILED
March 10, 2014
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 12-0896 (BOR Appeal No. 2046895)
(Claim No. 2011023745)

C & A INDUSTRIES, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Debra Petrichko, by Robert Stultz, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. C & A Industries, Inc., by Michael Watson, 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 February 7, 2012, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's October 21, 2010, decision denying 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. Petrichko alleges she was injured in the course of her employment when she fell at work on October 12, 2010. In her deposition on May 12, 2011, she testified that she was on a break outside when she turned around and fell down. She then experienced severe weakness in her legs and was unable to stand or walk on her own. An emergency room report from that night indicates that the final diagnosis was lower extremity weakness of unclear etiology. The report of injury indicates that Ms. Petrichko's condition was non-occupational. The claims administrator denied her claim on October 21, 2010. Ms. Petrichko was able to work for approximately another month and a half before she became unable to perform her occupational duties.

Ms. Petrichko has a history of weakness in her lower extremities dating back as far as 2007. She reported to Dale Rader, M.D., in July of 2007 that she was having problems with back pain that radiated into her legs. She also reported experiencing weakness. The treatment note of John Porter, D.O., dated September 24, 2007, indicates that Ms. Petrichko developed intermittent weakness in her left leg in May of 2007. She reported that she fell twice in the previous two months due to weakness in her left leg. In a letter from October of 2007, Rajkumor Joshi, M.D., stated that she continued to experience weakness in her left leg and pain in her back. She also continued to have problems with numerous falls and was unable to work at that time due to her condition.

Peter Apel, M.D.,’s August 20, 2011, treatment note indicates that Ms. Petrichko underwent surgical decompression of the cervical spine in December of 2010, and was still experiencing difficulty with weakness in her upper and lower extremities as well as neuropathic and myelopathic pain. It was his opinion that her symptoms were due to persistent myelomalacia and a spinal cord injury secondary to acute myelopathy which caused her fall on October 12, 2010. He opined that she had pre-existing cervical stenosis, but she was not myelopathic before the fall. He attributed her symptoms to a fall at work.

Andrew Sumich, M.D., evaluated Ms. Petrichko on August 23, 2011, and found that her condition was not related to her occupational duties. He determined that she had pre-existing degenerative cervical stenosis which likely caused weakness in her legs and caused her to fall at work. He noted that his opinion was based on the fact that she landed on her buttocks when she fell and did not sustain trauma to her head or neck. Also, an MRI from December of 2010 showed cervical stenosis consistent with significant degenerative and spondylitic disease rather than an acute injury.

The Office of Judges affirmed the decision of the claims administrator in its February 7, 2012, Order. The Office of Judges determined that Ms. Petrichko’s fall was due to leg weakness. It noted that the emergency room report from that day indicated that she did not have an occupational injury. She was diagnosed with lower extremity weakness of unclear etiology. The Office of Judges concluded that Dr. Apel’s opinion, that the fall caused Ms. Petrichko’s condition, was not supported by the evidentiary record. She has a history of weakness in her legs that has caused her to fall on several occasions. The opinion of Dr. Sumich was determined to be the most persuasive. Accordingly, the Office of Judges held that Ms. Petrichko failed to meet her burden of proof to establish that she sustained an injury in the course of her employment.

The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its Order in its June 29, 2012, decision. This Court agrees with the reasoning and conclusions of the Board of Review. The evidentiary record illustrates that Ms. Petrichko has a long history of weakness in her legs that has caused numerous falls. There is no persuasive evidence in the record to indicate that her condition was caused by her fall at work on October 12, 2010. Therefore, the decision of the Board of Review is supported by the evidentiary record and is hereby affirmed.

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 10, 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