

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Kelli R. Cooper,
Claimant Below, Petitioner

vs.) **No. 22-0466** (BOR Appeal No. 2057590)
(JCN: 2021002660)

West Virginia Department of Health & Human Services,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Kelli R. Cooper appeals the decision of the West Virginia Workers' Compensation Board of Review ("Board of Review"). Respondent West Virginia Department of Health and Human Resources filed a timely response.¹ The issue on appeal is compensability of the claim. The claims administrator rejected the claim on August 31, 2020. The Workers' Compensation Office of Judges ("Office of Judges") affirmed the decision in its November 5, 2021, order. The order of the Office of Judges was affirmed by the Board of Review on June 2, 2022. Upon our review, we determine that oral argument is unnecessary and that a memorandum decision affirming the Board of Review's decision is appropriate. *See* W. Va. R. App. P. 21.

Ms. Cooper alleges that she developed carpal tunnel syndrome from her work duties of typing and having to hold her notebook/laptop over a period of seventeen years while working for the respondent. She initially sought treatment by Gregory Porter, PA-C, on June 5, 2020, and complained of bilateral arm and hand numbness that began several months prior to seeking treatment. At the time of her examination, the petitioner's active medical problems included diabetes mellitus, obesity, and hypothyroidism. Because Mr. Porter suspected radiculopathy, the petitioner was referred for nerve conduction studies.

Electrodiagnostic studies were performed on June 19, 2020, and revealed bilateral carpal tunnel syndrome. The condition was worse on the right side. Ms. Cooper submitted the West Virginia Department of Health and Human Resources Employee First Report of Injury form on

¹Petitioner, Kelli R. Cooper, is represented by Thomas Patrick Maroney, and respondent, West Virginia Department of Health and Human Resources, is represented by Jillian L. Moore and Steven K. Wellman. Effective January 1, 2024, the Department of Health and Human Resources was divided into three agencies; the parties have not advised the Court which agency is the employer in this case.

July 20, 2020, listing the symptoms as pain and numbness of the wrists, hands, and fingers from the activity of typing. The claim was reviewed by James Dauphin, M.D., of the Office of Medical Management on August 27, 2020. Dr. Dauphin opined that the claim should be denied and noted that long term use of a computer has not been implicated in carpal tunnel syndrome as an occupational disease. Dr. Dauphin found no causal relationship between the petitioner's condition and her occupational duties, and he noted petitioner's history of diabetes, hypothyroidism, and obesity as conditions known to contribute to the development of carpal tunnel syndrome. By order dated August 31, 2020, the claims administrator rejected the claim for bilateral carpal tunnel syndrome. The denial was based on: "The disability complained of was not due to an injury or disease received in the course of and resulting from employment."

On October 20, 2020, John Pierson, M.D., completed the physician's section of the report of occupational disease form and indicated that Ms. Cooper's bilateral carpal tunnel syndrome was a direct result of her occupation. However, Dr. Pierson provided no explanation as to any causal relationship between the petitioner's occupational duties and her carpal tunnel syndrome. The claimant's section of the form was blank.

Ms. Cooper submitted a protest letter dated December 19, 2020, and later underwent a deposition on March 4, 2021. The petitioner testified about her job duties, her physical activities at work and outside of work, her medical history, and the treatment she received for her bilateral wrist/hand symptoms. She testified that she performed computer work about six and a half hours out of the eight-hour workday for data entry. At times, while working outside of the office, she used her laptop while holding it in an awkward position. She further stated that while carrying her laptop, she had to hold onto it tight so that it did not slip out of her hand. Ms. Cooper acknowledged her comorbidities and indicated that the conditions are controlled by medication. The petitioner also testified that she was only evaluated by Dr. Pierson on one occasion.

The petitioner was seen by David Soulsby, M.D., on June 16, 2021, for an independent medical evaluation concerning her carpal tunnel syndrome. Ms. Cooper reported that as a program manager, she supervised staff members, scheduled staff activity, and reviewed and prepared reports, as well as used computers, registers, and phones. She began to develop wrist pain, numbness, tingling, and grip weakness several years ago. After taking a new job in 2019, the petitioner was required to perform more computer work, which aggravated her symptoms. Dr. Soulsby diagnosed the petitioner with bilateral carpal tunnel syndrome, hypothyroidism, diabetes mellitus, obesity, status post gastric sleeve surgery, thoracic kyphoscoliosis, and a history of resolved cervical sprain/strain. Based upon the medical examination, history, and record review, Dr. Soulsby stated: "I do not find any of these conditions to have been caused by the claimant's work." Dr. Soulsby further stated that carpal tunnel syndrome is a very common disease process affecting many people regardless of occupation with a prevalence known to be higher in individuals who are afflicted by comorbidities including hypothyroidism, diabetes mellitus, and obesity. Dr. Soulsby stated that Ms. Cooper is not in an occupation commonly associated with occupationally induced carpal tunnel syndrome, and he concluded: "There is a reasonable medical probability that this claimant's carpal tunnel syndrome has developed as an ordinary disease process to which she was equally exposed outside of the workplace." Surgery was not recommended because it was not found that it was needed because of the petitioner's employment.

In a final decision dated November 5, 2021, the Office of Judges found that Ms. Cooper has not established by a preponderance of the evidence that she sustained bilateral carpal tunnel syndrome in the course of and resulting from her employment. The only physician of record to opine that the petitioner's bilateral carpal tunnel syndrome was causally related to her employment was Dr. Pierson, as per the Report of Occupational Disease dated October 20, 2020. However, the Office of Judges noted that the physician's section of the form was completed prior to the claimant's section being completed. The Office of Judges further noted that there is no indication that Dr. Pierson was aware of the petitioner's job duties and/or activities or whether or not he took into consideration the effect of the petitioner's comorbidities. Both Dr. Dauphin and Dr. Soulsby opined that the petitioner's bilateral carpal tunnel syndrome was not causally related to her employment and that the three comorbidities place her at a higher risk to develop carpal tunnel syndrome. The Office of Judges determined that the petitioner had not established that her diagnosis of bilateral carpal tunnel syndrome was causally related to employment and affirmed the August 31, 2020, claims administrator order which rejected the claim. The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed the decision on June 2, 2022.

This Court may not reweigh the evidentiary record, but must give deference to the findings, reasoning, and conclusions of the Board of Review, and when the Board's decision affirms prior rulings by both the Workers' Compensation Commission and the Office of Judges, we may reverse or modify that decision only if it is in clear violation of constitutional or statutory provisions, is clearly the result of erroneous conclusions of law, or is based upon a material misstatement or mischaracterization of the evidentiary record. *See* W. Va. Code § 23-5-15(c) & (d). We apply a de novo standard of review to questions of law. *See Justice v. W. Va. Off. of Ins. Comm'n*, 230 W. Va. 80, 83, 736 S.E.2d 80, 83 (2012).

After review, we agree with the decision of the Office of Judges, as affirmed by the Board of Review. "In order for a claim to be held compensable under the Workmen's Compensation Act, three elements must coexist: (1) a personal injury (2) received in the course of employment *and* (3) resulting from that employment." Syl. Pt. 1, *Barnett v. State Workmen's Comp. Comm'r*, 153 W. Va. 796, 172 S.E.2d 698 (1970). Also, "[i]n determining whether an injury resulted from claimant's employment, a causal connection between the injury and employment must be shown to have existed." Syl. Pt. 3, *Emmel v. State Comp. Director*, 150 W. Va. 277, 145 S.E.2d 29 (1965). The medical record establishes that the petitioner has hypothyroidism, diabetes mellitus, and suffers from obesity. The petitioner's work history indicates that her job does not fall within the class of employment that is noted to be a high risk for developing carpal tunnel syndrome, as found in West Virginia Code of State Rules § 85-20-41.5 (2006). The petitioner attributes her carpal tunnel syndrome to typing over a period of seventeen years and carrying her laptop daily for eight years. However, the petitioner's job does not require her to exert high force grip, nor does she experience highly repetitive, manual movement. Also, the petitioner is not required to work with awkward wrist positioning, and she does not use vibratory tools. As such, the evidence of record supports the reasoning and conclusions of the Office of Judges. Therefore, the Board of Review's order dated June 2, 2022, is affirmed.

Affirmed.

ISSUED: January 25, 2024

CONCURRED IN BY:

Chief Justice Tim Armstead
Justice Elizabeth D. Walker
Justice John A. Hutchison
Justice William R. Wooton
Justice C. Haley Bunn