

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

PATRICIA J. HUTCHINSON, Petitioner

April 12, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 10-4021 (BOR Appeal No. 2044624)
(Claim No. 2010101227)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
SUMMERSVILLE MEMORIAL HOSPITAL, Respondent**

MEMORANDUM DECISION

Petitioner Patricia J. Hutchinson, by John Shumate, her attorney, appeals the decision of the Board of Review. Summersville Memorial Hospital, by Daniel Murdock, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated December 2, 2010, in which the Board affirmed a May 27, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's November 23, 2009, decision closing the claim for temporary total disability benefits. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

Having considered the petition and the relevant decision of the lower tribunal, the Court is of the opinion that the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the Court determines that there is no prejudicial error. This case does not present a new or significant question of law. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

In its Order, the Office of Judges held that the record did not contain sufficient evidence to show that Ms. Hutchinson remains temporarily and totally disabled as a result of her July 29, 2009, injury. Ms. Hutchinson disputes this finding and asserts that the medical evidence of record supports the conclusion that she remains temporarily and totally disabled as a result of her July 29, 2009, injury. Although Ms. Hutchinson did suffer a compensable injury on July 29, 2009, the record before this Court indicates only that she is continuing to experience pain, and this alone is not sufficient evidence to demonstrate that she remains temporarily and totally disabled as a result of her

compensable injury. The Board of Review reached the same reasoned conclusion in its decision of December 2, 2010.

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: April 12, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh