

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

DORIS J. SPAULDING, Petitioner

June 29, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 10-4027 (BOR Appeal No. 2044694)
(Claim No. 2004019007)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
DENNIS E. COLLINS, Respondent

MEMORANDUM DECISION

Petitioner, Doris J. Spaulding, by John C. Blair, her attorney, appeals the Board of Review order denying the addition of the cervical spine as a compensable component in her claim. The Office of Insurance Commissioner, by Mary Rich Maloy, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated December 6, 2010, in which the Board affirmed a June 8, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's order denying the addition of the cervical spine as a compensable component. The appeal was timely filed by the petitioner and a response was filed by the Office of Insurance Commissioner. 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, response, 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.

The Board of Review held the preponderance of the evidence does not establish that Ms. Spaulding suffered a cervical spine injury. Ms. Spaulding asserts the Office of Judges wrongfully asserted its lay opinion in place of the reasoned medical opinion of Dr. Scott regarding Ms. Spaulding's neck injury. Dr. Scott's report clearly documents Ms. Spaulding complained of neck pain as early as 2004. Ms. Spaulding also complained of neck pain in 2006 during Dr. Grady's

independent medical evaluation. Further, Ms. Spaulding asserts she should not be faulted because her treating physician failed to seek the addition of the cervical spine as a compensable component of the claim.

The Office of Judges considered the medical evidence, including x-rays and MRI studies, and determined the evidence does not establish a cervical spine injury. Dr. Jerry Scott's report indicates Ms. Spaulding's pain is related to the trapezius injury, rather than the cervical spine. The diagnosis of cervical spine sprain/strain did not occur until many years after the compensable injuries. Thus, the Office of Judges held "[i]t is simply unreasonable to believe [Ms. Spaulding] suffered a sprain/strain to her cervical spine on October 17, 2003, which failed to manifest itself for six years." As a result, the Office of Judges held the preponderance of the evidence does not establish Ms. Spaulding suffered a cervical spine injury. The Office of Judges, too, found no basis for adding the cervical spine as a compensable component or for disputing the Claims Administrator's findings. The Board of Review reached the same reasonable conclusion in affirming the Office of Judges in its decision of December 6, 2010.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear statutory provision nor is the decision based upon the Board's material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the Court affirms the Board of Review Order.

Affirmed.

ISSUED: June 29, 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