

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

ETHEL VENNUM, Petitioner

February 24, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) **No. 101360 (BOR Appeal No. 2044241)**
(Claim No. 2007216170)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
THE HOMER LAUGHLIN CHINA COMPANY,
Respondent**

MEMORANDUM DECISION

Petitioner, Ethel Vennum, by Patrick K. Maroney, her attorney, appeals the Board of Review order denying authorization for EMG / NCV testing. The Homer Laughlin China Company, by Lucinda L. Fluharty, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated September 22, 2010, in which the Board affirmed a February 18, 2010, order of the Workers' Compensation Office of Judges. In its order, the Office of Judges affirmed the claims administrator's denial of authorization for EMG / NCV testing. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this matter is appropriate for consideration under the Revised Rules. 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 that the requested EMG / NCV testing is unrelated to Ms. Vennum's compensable spine injury and denied authorization. Ms. Vennum asserts the

testing is reasonably and medically necessary due to her compensable injury and the Board of Review improperly denied the testing. The Homer Laughlin China Company asserts Ms. Vennum failed to make the requisite showing that the EMG / NCV testing is related to her compensable injury, and never established that her symptoms relate to the compensable injury.

In its Order denying authorization for the EMG / NCV testing, the Office of Judges held the preponderance of the evidence does not support a finding that the testing is related to the compensable injury in this claim. (February 18, 2010, Office of Judges Order, p. 3). It found Dr. Martin performed a thorough examination of Ms. Vennum and found maximum medical improvement, and further opined no further treatment was necessary. *Id.* Additionally, it found Ms. Vennum did not present any evidence to refute the findings and conclusions contained in Dr. Martin's report. The Office of Judges, too, found no basis for authorization of the EMG / NCV testing, or for disputing the Claims Administrator's findings. The Board of Review reached the same reasoned conclusions in affirming the Office of Judges in its decision of September 22, 2010.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of constitutional or statutory provision, clearly the result of erroneous conclusions of law, or is 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 denying authorization for EMG / NCV testing.

Affirmed.

ISSUED: February 24, 2012

CONCURRED IN BY:

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh

DISSENTING:

Chief Justice Menis E. Ketchum