

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

BETSY J. NELSON, Petitioner

vs.) **No. 101553 (BOR Appeal No. 2044496)**
(Claim No. 2010121974)

FILED

June 18, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
RIA MILAN, LLC, Respondent

MEMORANDUM DECISION

Petitioner, Betsy J. Nelson, by Gary S. Wigal, appeals the Board of Review Order affirming the rejection of her claim. RIA Milan, LLC, by Marion E. Ray, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated November 8, 2010, in which the Board affirmed an April 7, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's February 12, 2010, Order, which rejected Ms. Nelson's claim. 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 parties' submissions 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 affirmed the Office of Judges' Order, which rejected Ms. Nelson's claim for workers' compensation benefits following a motor vehicle accident in which Ms. Nelson was injured. The accident happened on Ms. Nelson's way to her place of employment. However, Ms. Nelson was not scheduled to work on the day of the accident. Ms. Nelson received a call from her supervisor who requested, but did not require, Ms. Nelson to come to work as additional staffing was needed. Although Ms. Nelson acknowledges that injuries sustained by an employee while going to or coming from work are not compensable generally, she asserts that the journey resulting in her injury constitutes a "special errand," for which compensation may be provided.

Specifically, Ms. Nelson argues that five "special circumstances" existed: (1) she was called out to work at an abnormal time; (2) an urgent response was required; (3) the trouble that going to work involved; (4) the inconvenience of traveling on her day off; and (5) the time that was required.

Ms. Nelson asserts that these “factors establish that [she] was on a special task, service, mission, or errand for her employer.”

The Office of Judges noted first that Ms. Nelson was requested, not required, to work on the date of her injury. Ms. Nelson agreed to work that day, but she would not be paid until she reached RIA Milan LLC’s premises. Ms. Nelson was not requested or required to perform any duties for her employer on the way to work, the accident did not occur on her employer’s premises, and RIA Milan LLC did not direct the route taken to work. Instead, “the claimant was simply going to work.” “Subject to certain recognized exceptions, an injury sustained by an employee while on his way to and from work does not arise out of and occur in the course of employment.” *Harris v. Workmen’s Comp. Comm’r*, 158 W. Va. 66, 69, 208 S.E.2d 291, 293 (1974). Thus, the Office of Judges affirmed the rejection of Ms. Nelson’s claim. The Board of Review reached the same reasoned conclusion in affirming the Office of Judges in its November 8, 2010, decision.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of constitutional or statutory provision, nor is it clearly the result of erroneous conclusions of law, nor is it based upon the Board’s material misstatement or mischaracterization of the evidentiary record. Therefore, the rejection of Ms. Nelson’s claim is affirmed.

Affirmed.

ISSUED: June 18, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Thomas E. McHugh

DISSENTING:

Justice Margaret L. Workman