

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

EMMA KIDWELL, Petitioner

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

vs.) No. 101613 (BOR Appeal No. 2044533)
(Claim No. 2006207028)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
GREENBRIER HOTEL CORPORATION
(FORMERLY CSX HOTELS, INC.), Respondent**

MEMORANDUM DECISION

Petitioner Emma Kidwell, by Patrick Maroney, her attorney, appeals the decision of the Board of Review. Greenbrier Hotel Corporation, by Toney Stroud, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated November 22, 2010, in which the Board affirmed an April 21, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's May 28, 2009, decision denying intra-articular steroid injections for the left knee. 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 degenerative arthritis is not a compensable component of the claim, and that steroid injections of the left knee are not medically related and reasonably required to treat Ms. Kidwell's compensable injury. Ms. Kidwell disputes this finding and asserts that steroid injections are necessary to treat her compensable injury.

The Office of Judges found that the compensable injury in this claim was a medial meniscus tear, which has been surgically repaired. The Office of Judges found that Ms. Kidwell continues to

suffer from arthritis, but that the arthritis pre-dates the compensable injury and the steroid injections are being requested to treat this preexisting arthritis. The Office of Judges relied on the opinion of Dr. Orphanos, who found that Ms. Kidwell has preexisting degenerative changes in both of her knees. The Board of Review reached the same reasoned conclusion in its decision of November 22, 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:

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh

DISSENTING:

Chief Justice Menis E. Ketchum