

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

October 17, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

NANCY L. WEAVER, Petitioner

vs.) **No. 11-0375** (BOR Appeal No. 2045017)
(Claim No. 840024897)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
PARA ENTERPRISES, INC., Respondent**

MEMORANDUM DECISION

Petitioner Nancy L. Weaver, by Robert L. Stultz, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. West Virginia Office of the Insurance Commissioner, by Gary Mazezka, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated February 24, 2011, in which the Board affirmed a September 7, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's denial of dependent's 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.

Ms. Weaver's husband ("decedent") was injured in 1983 when working as an iron worker. Decedent received worker's compensation benefits for a permanent and total disability from 1983 until his death in 2003. The cause of his death was ruled to be renal failure, caused in part by abdominal aortic aneurysm.

Ms. Weaver asserts she is entitled to dependent benefits due to her husband's death substantially resulting from a compensable injury which caused the decedent to adopt a sedentary lifestyle that contributed to the abdominal aortic aneurysm that contributed to his

death. West Virginia Office of the Insurance Commissioner asserts the decedent's sedentary lifestyle was neither caused by decedent's compensable injury, nor cause for decedent's death, based on two doctors who surveyed peer-reviewed journal articles in coming to their conclusion.

The Office of Judges determined the relevant medical evidence does not support a finding Ms. Weaver's husband's death was substantially contributed to, or caused by, his injury. It noted Dr. Walden reviewed peer-reviewed journal articles on the subject of atherosclerosis, which caused the abdominal aortic aneurysm that contributed to decedent's renal failure, and did not find sedentary lifestyle to be among the contributing factors. It further found persuasive Drs. Mukkamala and Walden's opinions that no causal connection existed between the decedent's renal failure and his remote orthopedic injuries, due to the doctors' reliance on peer-reviewed journal articles. The Board of Review reached the same reasoned conclusion in affirming the Office of Judges in its decision of February 24, 2011.

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: October 17, 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