

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

June 12, 2013

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

**WEST VIRGINIA OFFICE OF THE INSURANCE
COMMISSIONER,
Commissioner Below, Petitioner**

vs.) **No. 11-1038** (BOR Appeal No. 2045431)
(Claim No. 2004050198)

**JERRY W. ROSE,
Claimant Below, Respondent**

and

**WAYNE COUNTY BOARD OF EDUCATION,
Employer Below, Respondent**

MEMORANDUM DECISION

Petitioner West Virginia Office of the Insurance Commissioner, by David L. Stuart, its attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Jerry W. Rose, by John C. Blair, his attorney, and Wayne County Board of Education, by Steven K. Wellman, its attorney, filed timely responses.

This appeal arises from the Board of Review's Final Order dated June 13, 2011, in which the Board affirmed a December 10, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the claims administrator's January 19, 2009, denial of authorization for bilateral carpal tunnel splints and bilateral carpal tunnel injections. The Court has carefully reviewed the records, written arguments, and appendices contained in the briefs, and the case is mature for consideration.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Rules of Appellate Procedure.

Mr. Rose has worked as a custodian for the Wayne County Board of Education for nearly two decades. On May 28, 2004, Mr. Rose filed a claim for workers' compensation, stating that the repetitive sweeping and mopping of his custodial job had caused bilateral carpal tunnel syndrome, which was found to be compensable by the claims administrator on July 13, 2004. The claim was filed and managed by the Workers' Compensation Old Fund. Mr. Rose continued to receive treatment over the next several years including release surgery on both his wrists. Mr. Rose continued to work throughout his treatment period and continued to be exposed to the hazards which caused his carpal tunnel syndrome. On November 20, 2008, Mr. Rose received an electric shock to his right forearm, wrist, and hand which was held compensable as a separate claim. The treatments Mr. Rose received on his claim for carpal tunnel syndrome varied in success and his condition went through periods of improvement and decline. On January 19, 2009, Mr. Rose was examined by Dr. Bolano, who requested authorization for bilateral carpal tunnel syndrome splints and bilateral carpal tunnel injection. The request was denied by the claims administrator of the Workers' Compensation Old Fund, stating that the requested treatments were not related to Mr. Rose's compensable condition but to the electric shock he received on November 20, 2008.

The Office of Judges found that the requested medical treatments were medically and reasonably related to Mr. Rose's compensable carpal tunnel syndrome, as required under West Virginia Code § 23-4-3(a)(1) (2005). The Office of Judges found, based on the consistent diagnoses of Dr. Lowe and Dr. Bolano, that Mr. Rose continued to suffer carpal tunnel syndrome, even after a course of treatment. Although the Office of Judges recognized that Mr. Rose had received an electric shock to his right forearm, wrist, and hand on November 20, 2008, it found that the injury had no relation to Mr. Rose's need for the requested treatment, because it was minor and affected only his right arm. The Office of Judges, finally, determined that, since the requested treatments were related to his compensable carpal tunnel syndrome, the services were chargeable to the Workers' Compensation Old Fund, under which the compensable claim was originally filed. The Board of Review adopted the findings of the Office of Judges and affirmed its Order on June 13, 2011.

The West Virginia Office of Insurance Commissioner, Old Fund, argues that the Board of Review was clearly wrong to affirm the Order of the Office of Judges and asserts that the requested treatment should not be charged to the Workers' Compensation Old Fund. The Office of Insurance Commissioner requests that the Court require Mr. Rose to file a new claim based on his continued exposure to the work hazards causing carpal tunnel syndrome.

We agree with the Board of Review and the reasoning of the Office of Judges. The requested bilateral carpal tunnel syndrome splints and bilateral carpal tunnel injection are reasonably related to Mr. Rose's compensable carpal tunnel syndrome. The requested medical treatments were reasonably related to Mr. Rose's compensable injury and his request fell within the five year time limit set out in West Virginia Code § 23-4-16(a) (2005). His request, therefore, falls under his prior-held claim for carpal tunnel syndrome and is chargeable to the Workers' Compensation Old Fund.

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: June 12, 2013

CONCURRED IN BY:

Chief Justice Brent D. Benjamin

Justice Robin J. Davis

Justice Margaret L. Workman

Justice Menis E. Ketchum

Justice Allen H. Loughry II