

**STATE OF WEST VIRGINIA**

**SUPREME COURT OF APPEALS**

**FILED**

June 6, 2013

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

**CHRISTINA KESSINGER,  
Claimant Below, Petitioner**

vs.) **No. 11-1332** (BOR Appeal No. 2045691)  
(Claim No. 2010112286)

**WEST VIRGINIA PARKWAYS ECONOMIC DEVELOPMENT,  
Employer Below, Respondent**

**MEMORANDUM DECISION**

Petitioner Christina Kessinger, by John H. Shumate Jr., her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. West Virginia Parkways Economic Development, by H. Dill Battle III, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated August 25, 2011, in which the Board affirmed a March 4, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's November 10, 2009, decision rejecting Ms. Kessinger's application for workers' compensation benefits for bilateral carpal tunnel syndrome. 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.

Ms. Kessinger works as a toll collector for West Virginia Parkways Economic Development. She was diagnosed by Dr. Zahir with bilateral carpal tunnel syndrome on October 27, 2009, which was confirmed by an EMG and nerve conduction study. On November 10, 2009, the claims administrator denied Ms. Kessinger's application for workers' compensation benefits because there was insufficient evidence relating her carpal tunnel syndrome to her work-related activities.

The Office of Judges affirmed the claims administrator's decision, and held that the preponderance of the evidence fails to establish that Ms. Kessinger's bilateral carpal tunnel syndrome is related to her occupational activities. Ms. Kessinger disagrees and asserts that the evidence establishes that her carpal tunnel syndrome is caused from the awkward wrist positions, significant grip force, and repetitive manual movements required by her occupational activities. West Virginia Parkways Economic Development maintains that Ms. Kessinger's condition is not related to her work activities, and that under West Virginia Code § 23-4-1(f)(4) (2008), her carpal tunnel syndrome comes from a hazard which she would have been equally exposed to outside of her employment, especially due to her obesity.

In affirming the rejection of the claim for workers' compensation benefits, the Office of Judges concluded that Dr. Bailey's evaluation was more complete and explicit medical evidence of Ms. Kessinger's conditions because Dr. Bailey conducted a physical examination, considered her work activities, and discussed confounding conditions which may have precipitated the carpal tunnel syndrome. Under West Virginia Code of State Rules § 85-20-41.2 (2006), diagnostic accuracy, confounding conditions, work setting, and duration of symptoms are factors to be considered in assigning causality of carpal tunnel syndrome. Dr. Bailey concluded Ms. Kessinger's occupational activities did not cause her carpal tunnel syndrome, attributing the condition to Ms. Kessinger's personal risk factors including obesity. The Office of Judges noted that Dr. Zahir's evidence contained only a bare representation that Ms. Kessinger's carpal tunnel syndrome is related to her employment. The Office of Judges concluded that the preponderance of the credible medical evidence did not establish that Ms. Kessinger's condition was caused by her occupational activities. The Board of Review reached the same reasoned conclusions in its decision of August 25, 2011. We agree with the reasoning and conclusions of the Board of Review.

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 6, 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