

**STATE OF WEST VIRGINIA**  
**SUPREME COURT OF APPEALS**

**JANICE L. PALICKA,**  
**Claimant Below, Petitioner**

**FILED**  
July 24, 2013  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

**vs.) No. 11-1462** (BOR Appeal No. 2045702)  
(Claim No. 950031088)

**WHEELING HOSPITAL, INC.,**  
**Employer Below, Respondent**

**MEMORANDUM DECISION**

Petitioner Janice L. Palicka, by M. Jane Glauser, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Wheeling Hospital, Inc., by Jennifer Hagedorn, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated September 30, 2011, in which the Board affirmed a February 15, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's September 13, 2010, order. 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.

On December 23, 1994, Janice L. Palicka was employed as a licensed practical nurse for Wheeling Hospital, Inc. when she sustained pain in her mid-back while transferring a patient. Her claim was held compensable for thoracic sprain, neck sprain, sprain/strain of the back, sacroiliac (ligamentous) sprain and lumbar sprain. A disc herniation in Ms. Palicka's spine was surgically removed and fused with no further treatment available for her cervical spine. Ms. Palicka continued to receive follow up care including pain medications and diagnostic testing for pain. On September 10, 2010, Dr. Chalifoux requested a TENS unit and necessary supplies for six months. The claims administrator denied authorization for the TENS unit and supplies. Ms. Palicka appealed.

The Office of Judges found that the preponderance of evidence showed that a TENS unit and the necessary supplies were not medically related or reasonably required for the treatment of Ms. Palicka's compensable injury. The Office of Judges noted that this claim was held compensable for thoracic sprain, neck sprain, sprain/strain of the back, sacroiliac (ligamentous) sprain and lumbar sprain. In 2000, Dr. Doyle attributed Ms. Palicka's herniated disc mainly to non-work related conditions including degenerative arthritis and degenerative disc disease of the spine. The Office of Judges found that the evidence submitted was insufficient to establish TENS unit treatment in excess of that provided in West Virginia Code of State Rules § 85-20-4.1, therefore, the TENS unit and supplies were deemed not reasonably required medical treatment. The Board of Review reached the same reasoned conclusion in its decision of September 30, 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: July 24, 2013**

**CONCURRED IN BY:**

Chief Justice Brent D. Benjamin

Justice Robin J. Davis

Justice Allen H. Loughry II

**DISSENTING:**

Justice Margaret L. Workman

Justice Menis E. Ketchum