

**STATE OF WEST VIRGINIA**

**SUPREME COURT OF APPEALS**

**FILED**

October 7, 2015

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

**BRIGIT D. ANDREWS,**  
**Claimant Below, Petitioner**

vs.) **No. 14-0185** (BOR Appeal No. 2048710)  
(Claim No. 2000012682)

**WEST VIRGINIA OFFICE OF  
INSURANCE COMMISSIONER**  
**Commissioner Below, Respondent**

**and**

**MONTGOMERY GENERAL HOSPITAL,**  
**Employer Below, Respondent**

**MEMORANDUM DECISION**

Petitioner Brigit D. Andrews, by Patrick K. Maroney, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. West Virginia Office of the Insurance Commissioner, by Brandolyn N. Felton-Ernest, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated January 29, 2014, in which the Board affirmed an August 14, 2013, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's October 19, 2012, decision to deny the request for the medication Lortab. 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. Andrews, an admitting clerk for Montgomery General Hospital, developed carpal tunnel syndrome in the course of and as a result of her employment. Her claim was ruled compensable for carpal tunnel syndrome and brachial neuritis on March 23, 2001. On April 13, 2012, Paul Bachwitt, M.D., performed an independent medical evaluation of Ms. Andrews. Dr. Bachwitt noted that a September 3, 1999, nerve conduction study revealed mild right carpal tunnel syndrome and moderate left ulnar neuropathy at the elbow. Dr. Bachwitt further noted that Ms. Andrews underwent right carpal tunnel surgery on September 13, 2001, left carpal tunnel surgery on September 25, 2001, left ulnar nerve transposition on October 9, 2001, and another left ulnar nerve transposition on April 14, 2006. Dr. Bachwitt was critical of the treatment up to this point and felt the treatment was not related to any work injury. Dr. Bachwitt further opined that narcotic medication was unnecessary for an injury that occurred over twelve years ago.

On September 13, 2012, Ms. Andrews reported to Richard Bowman, M.D., for evaluation. Dr. Bowman had been treating Ms. Andrews's pain with Tylenol; however he also prescribed her a dosage of Lortab based on her complaints of increased pain. Ms. Andrews reported that the Lortab dosage was no longer controlling her pain. Dr. Bowman submitted a request for a higher dosage of Lortab. Dr. Bowman was of the opinion that a spinal cord stimulator would be the best course of action. However, the higher dosage of Lortab would be useful in the interim period to control her pain. The claims administrator denied the request for the higher dosage of Lortab because it exceeded the standard set out in West Virginia Code of State Rules § 85-20-53.14 (2006). Ms. Andrews protested.

The Office of Judges determined that the medication Lortab was not medically related and reasonably required to treat Ms. Andrews's compensable conditions. The Office of Judges noted that pursuant to West Virginia Code of State Rules § 85-20-53.14(b), a Schedule III drug "should be prescribed on an outpatient basis for no longer than six weeks after the initial injury or following a subsequent operative procedure." The Office of Judges noted that the last procedure in this case was in 2006. Next, the Office of Judges examined whether Ms. Andrews had shown that her condition was sufficiently extraordinary or unusual in nature to warrant treatment outside of the mandate in West Virginia Code of State Rules § 85-20-53.14. The Office of Judges noted that pursuant to West Virginia Code of State Rules §§ 85-20-60 and 85-20-61 (2006), for the continued use of narcotic pain medication, there needs to be a substantial reduction of the claimant's pain intensity and continuing improvement in her function. The Office of Judges found that the evidence of record showed that Ms. Andrews's pain has progressively worsened despite the increased doses of opioid medications. As such, the Office of Judges found that Ms. Andrews fell well outside of the guidelines for continued opioid treatment. The Board of Review adopted the findings of the Office of Judges and affirmed its Order.

We agree with the findings of the Office of Judges and conclusions of the Board of Review. Ms. Andrews failed to prove that her case is unusual or extraordinary and would require her to receive opioid pain medications past the time limits promulgated in West Virginia Code of State Rules § 85-20-53.14. The evidence in the case indicates that she should no longer be receiving the medication because her symptoms are worsening as her opioid dosages increase.

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 7, 2015**

**CONCURRED IN BY:**

Chief Justice Margaret L. Workman

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Menis E. Ketchum

Justice Allen H. Loughry II