

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

SUE NUTTER, Petitioner

vs.) No. 101400 (BOR Appeal No. 2044296)
(Claim No. 2009079056)

FILED

December 7, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
CPM, LLC, Respondent

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated October 5, 2010, in which the Board affirmed a February 24, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's March 31, 2009, Order, which denied compensability of Ms. Nutter's claim. The appeal was timely filed by the petitioner, and CPM, LLC filed a response. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this matter is appropriate for consideration under the Revised Rules. Having considered the parties' submissions 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.

The Board of Review affirmed the Office of Judge's Order, which denied compensability of Ms. Nutter's claim. Ms. Nutter acknowledges that she sustained an identical left shoulder injury about six months prior to her alleged subject injury, which she states occurred on January 17, 2009. Ms. Nutter argues that her prior injury, which occurred on June 28, 2008, does not defeat compensability in this case.

The Office of Judges first noted that Ms. Nutter is simply not a credible witness. (Feb. 24, 2010, Office of Judges Order, p. 4.) Ms. Nutter denied any shoulder pain or injury prior to June 2008; however, her medical records belie this assertion. *Id.* Ms. Nutter

complained of left shoulder pain as early as 2006. *Id.* Moreover, she has received left shoulder treatment regularly since 2008. *Id.* The medical records also reveal that Ms. Nutter has been diagnosed with “a bizarre degenerative condition.” *Id.* For these reasons, the Office of Judges affirmed the claims administrator’s decision to deny compensability. The Board of Review reached the same reasoned conclusion in affirming the Office of Judges in its October 5, 2010, decision.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of constitutional or statutory provision, clearly the result of erroneous conclusions of law, or based upon the Board’s material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the denial of Ms. Nutter’s application for benefits is affirmed.

Affirmed.

ISSUED: December 7, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Thomas E. McHugh

DISSENTING:

Justice Menis E. Ketchum