

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

PAMELA D. DURST, Petitioner

June 29, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 11-0002 (BOR Appeal No. 2044651)
(Claim No. 2009090399)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
FELMAN PRODUCTION, INC., Respondent

MEMORANDUM DECISION

Petitioner, Pamela D. Durst, by Edwin H. Pancake, her attorney, appeals the Board of Review order denying compensability for carpal tunnel syndrome. Felman Production, Inc. (hereinafter “Freeman”), by T. Jonathan Cook, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers’ Compensation Board of Review’s Final Order dated December 6, 2010, in which the Board affirmed a May 13, 2010, Order of the Workers’ Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator’s denial of compensability for carpal tunnel syndrome. The appeal was timely filed by the petitioner and a response was filed by Felman Production, Inc. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

Having considered the petition, response, 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.

Ms. Durst asserts she suffers from work-related carpal tunnel syndrome resulting from her work duties of busting slag with a shovel and rebar. Dr. John Ellison evaluated Ms. Durst and opined the carpal tunnel syndrome resulted from an occupational injury causing a disability. The medical records establish Ms. Durst has a history of morbid obesity, hypothyroidism, and a diagnosis

of carpal tunnel syndrome in 2004. Dr. Marsha L. Bailey conducted an independent medical evaluation and opined Ms. Durst does not suffer from work-related carpal tunnel syndrome.

The Office of Judges held the preponderance of the evidence does not establish that Ms. Durst suffers from work-related carpal tunnel syndrome. The OoJ found that “A review of the evidence establishes inconsistencies between [Ms. Durst’s] testimony, [Ms. Durst’s] treating physicians’ records, and [Ms. Durst’s] actual job description. The Office of Judges further held Ms. Durst was diagnosed with carpal tunnel syndrome in 2004, confirmed by EMG studies, by Dr. Ellison and Dr. Hanington. The Office of Judges, too, found no basis for finding Ms. Durst’s carpal tunnel syndrome is work-related and compensable, or for disputing the Claims Administrator’s findings. The Board of Review reached the same reasoned conclusions in affirming the Office of Judges in its decision of December 6, 2010.

For the foregoing reasons, we find that the decision of the Board of Review is not clearly the result of erroneous conclusions of law, or upon the Board's material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the Court affirms the Board of Review order finding Ms. Durst’s carpal tunnel syndrome is not work-related and, therefore, not compensable.

Affirmed.

ISSUED: June 29, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh