

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

**SANDRA MILAM, WIDOW OF
LARRY MILAM, deceased, Petitioner**

July 26, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 11-0021 (BOR Appeal No. 2044744)
(Claim No. 860013168)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
MADISON AND ASSOCIATES, INC., Respondent**

MEMORANDUM DECISION

Petitioner, Sandra Milam, by Christopher D. Negley, her attorney, appeals the Board of Review Order denying her request for widow's benefits. The West Virginia Office of Insurance Commissioner, by David L. Stuart, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated December 8, 2010, in which the Board affirmed a June 11, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's denial of Ms. Milam's request for death benefits. 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.

On August 9, 1985, Mr. Milam was involved in a motor vehicle accident in the course of his employment and suffered a lumbosacral strain / sprain and left ankle strain / sprain¹. Mr. Milam was awarded a 10% permanent partial disability award and eventually a permanent total disability award on December 9, 1991. Over the course of the next twenty-two years Mr. Milam developed a variety of chronic diseases including diabetes mellitus, hyperlipidemia, and coronary artery disease. Mr. Milam's death certificate lists the cause of death as cerebral artery occlusion on July 12, 2007.

The petitioner, Sandra Milam, asserts a medical record review by Dr. Bruce A. Guberman establishes that Mr. Milam's chronic diseases and ultimately the coronary artery occlusion resulted from Mr. Milam's sedentary lifestyle. Dr. Guberman opined Mr. Milam's history of corticosteroid and epidural injections directly contributed to the development of diabetes mellitus through an artificial elevation of Mr. Milam's blood sugar levels. Dr. ChaunFang Jin also evaluated Mr. Milam's medical records and determined Mr. Milam's compensable injuries did not materially contribute to Mr. Milam's chronic diseases and death. It was Dr. Jin's opinion that these diseases are multifactorial in etiology and result from a variety of risk factors including old age, male gender, smoking, abnormal serum lipids, hypertension, diabetes mellitus, genetic trait, family history, and obesity / sedentary lifestyle.

The Office of Judges considered the opinions contained in Dr. Guberman and Dr. Jin's reports and held Dr. Guberman's report is "speculative and not very credible." "There is some evidence that Mr. Milam, had he been motivated, could have been more active." The Office of Judges further held the preponderance of the evidence does not demonstrate that the injury on August 9, 1985, contributed in any material degree to the decedent's death. Mr. Milam's medical history indicated many risk factors for the various chronic diseases, unrelated to the August 9, 1985, compensable injuries. Further, the Office of Judges held there is no medical evidence that can reasonably correlate a lumbar sprain / strain and ankle sprain / strain to the diseases that led to Mr. Milam's death. The Office of Judges, too, found no basis for finding Mr. Milam's compensable injuries materially contributed to his death, 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 8, 2010.

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 Court affirms the Board of Review Order denying Ms. Milam's request for widow's benefits.

¹Mr. Milam testified he also suffered from a congenital clubfoot condition which resulted in his left leg being an inch and half shorter than his right leg.

Affirmed.

ISSUED: July 26, 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