

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

SHEILA HARROUFF, Petitioner

July 17, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 11-0158 (BOR Appeal No. 2044355)
(Claim No. 2009094868)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
PEEBLES, Respondent

MEMORANDUM DECISION

Petitioner Sheila Harrouff, by William B. Gerwig III, her attorney, appeals the West Virginia Workers' Compensation Board of Review's Order denying an additional compensable component. Peebles, by Jeffrey Brannon, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated December 22, 2010, in which the Board affirmed a March 10, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's October 13, 2009, Order denying the addition of left patellar tendon partial tear as a compensable component. 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 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.

In this case, Ms. Harrouff was a sales associate with Peebles. She was injured on March 30, 2009, when she tripped on an object and fell on her knees. The claims administrator held the claim compensable for bilateral knee contusions on August 19, 2009. Dr. Sabio subsequently requested that left patellar tendon partial tear be added as a compensable component, relying on an August 25, 2009, MRI. The claims administrator on October 13, 2009, denied the request to add the additional compensable component.

The Office of Judges, in reaching its decision to affirm the claims administrator's denial of the additional compensable component, found that the preponderance of the evidence did not establish that the condition of left patellar tendon partial tear was incurred in the course of and as a result of Ms. Harrouff's employment. On appeal, Ms. Harrouff argues that based on the August 25, 2009, MRI results Dr. Sabio concluded the condition should be compensable, which is clear evidence that the condition was a result of the work-related injury. Peebles maintains that the evidence establishes only that Ms. Harrouff suffered bilateral knee contusions in the March 20, 2009, work accident. Dr. Bachwitt found no indication of a tear of the patellar tendon in his evaluation of Ms. Harrouff. The Office of Judges noted that the physician interpreting the MRI report indicated only a suspicion of a tear of the distal tibial tuberosity attachment of the patellar tendon, but did not make a diagnosis of this condition.

In reaching the conclusion that left patellar tendon partial tear was not a compensable component in this claim, the Office of Judges concluded that Dr. Bachwitt's thorough evaluation was more persuasive than Dr. Sabio's diagnosis update request. The Office of Judges noted that Dr. Sabio's basis for the diagnosis update request did not contain an explanation of how he arrived at his opinion. The Office of Judges concluded that the condition of left patellar tendon partial tear was not incurred in the course of and as a result of Ms. Harrouff's employment with Peebles. The Board of Review reached the same reasoned conclusion in its decision of December 22, 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 Board of Review Order is affirmed.

Affirmed.

ISSUED: July 17, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Margaret L. Workman

Justice Thomas E. McHugh

Justice Brent D. Benjamin not participating