

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

KAREN E. WILBURN, Petitioner

vs.) **No. 11-0195 (BOR Appeal No. 2045251)**
(Claim No. 2010110136)

FILED

November 16, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
MILDRED MITCHELL BATEMAN HOSPITAL, Respondent**

MEMORANDUM DECISION

Petitioner, Karen E. Wilburn, pro se, appeals the West Virginia Workers' Compensation Board of Review Order denying her benefits as a result of her carpal tunnel syndrome. Mildred Mitchell Bateman Hospital, by H. Dill Battle III, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated January 20, 2011, in which the Board affirmed a November 1, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's October 20, 2009, Order, rejecting Ms. Wilburn's claim. 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.

Ms. Wilburn, who is employed as an office assistant, was diagnosed with left carpal tunnel syndrome, which she sought to have held compensable. Ms. Wilburn's treating physician, Dr. Linda Savory, however indicated that an EMG/NCS would be necessary to confirm the diagnosis. Dr. Savory also had not "explored" with Ms. Wilburn her work duties to determine any relationship between those duties and Ms. Wilburn's diagnosis. After finding insufficient medical documentation to causally relate Ms. Wilburn's carpal tunnel syndrome to her work duties, the claims administrator denied Ms. Wilburn's claim.

Dr. Rebecca Thaxton undertook a physician review of Ms. Wilburn's medical records. Dr. Thaxton concluded that Ms. Wilburn's medical records do not support a work-related carpal

tunnel syndrome diagnosis. Rather, obesity is a greater predictor of carpal tunnel syndrome, and Ms. Wilburn is obese.

Dr. Marsha Bailey performed an independent medical examination and reached the same conclusion as Dr. Thaxton. Dr. Bailey stated that Ms. Wilburn's carpal tunnel syndrome is the sole result of her personal risk factors. Dr. Bailey also noted that Ms. Wilburn does not have occupational responsibilities that would place her at risk for occupationally-related carpal tunnel syndrome. Dr. Bailey also provided medical literature that fails to show a relationship between carpal tunnel syndrome and normal clerical duties.

In that same vein, a workers' compensation regulation provides that "[s]tudies have failed to show a relationship between normal clerical activities and CTS. When evaluating CTS in this work setting, a careful search for other contributing factors is essential." West Virginia Code of State Rules § 85-20-41.5. Ultimately, the claims administrator denied Ms. Wilburn's claim due to a lack of evidence causally connecting Ms. Wilburn's carpal tunnel syndrome to her occupational duties.

The Office of Judges, in reaching its decision to affirm the claims administrator's denial, also noted Ms. Wilburn's failure to offer evidence linking her carpal tunnel syndrome to her occupation. Ms. Wilburn offered only the report from Dr. Savory diagnosing carpal tunnel syndrome. The report specifically stated that Dr. Savory had not discussed with Ms. Wilburn whether her carpal tunnel syndrome could be the result of her occupational duties. Simply, Ms. Wilburn has offered no evidence to establish that her carpal tunnel syndrome resulted in the course of and as a result of her employment. The Board of Review reached the same reasoned conclusion in affirming the Office of Judges in its January 20, 2011 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. Wilburn's claim is affirmed.

Affirmed.

ISSUED: November 16, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh