

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

FILED
September 14, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

RITA JONES, Petitioner

vs.) **Nos. 11-0293 and 11-0867**

(BOR Appeal Nos. 2044696, 2044757 & 2045212)
(Claim No. 2003052220)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
TRUMBULL CORPORATION, Respondent**

MEMORANDUM DECISION

Petitioner Rita Jones, by M. Jane Glauser, her attorney, appeals of the West Virginia Workers' Compensation Board of Review's Orders denying requests for a psychiatric consultation and treatment.¹ The West Virginia Office of Insurance Commissioner, by David Stuart, its attorney, filed a timely response.

This appeal arises from both of the West Virginia Workers' Compensation Board of Review's Final Orders dated January 11, 2011, and May 5, 2011, in which the Board affirmed May 24, 2010, June 2, 2010, and September 30, 2010, Orders of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's Orders denying several requests for a psychiatric consultation and treatment for depression. 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. 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.

¹

Pursuant to a February 16, 2011, motion to consolidate case numbers 11-0293 and 11-0867, an Order was entered on March 1, 2011, granting Ms. Jones's request to consolidate.

Ms. Jones was working as a flagger for Trumbull Corporation on May 14, 2003, when she was hit by a vehicle. She suffered various compensable injuries, has received extensive treatment for such injuries, and still suffers from chronic pain. The claims administrator denied requests for a psychiatric consultation and treatment on the following dates: July 20, 2009; August 28, 2009; September 23, 2009; October 27, 2009; April 16, 2010; and January 21, 2010.

The Office of Judges held that no psychiatric condition had been held compensable in the claim, and a 2006 psychiatric examination showed Ms. Jones had no compensable psychiatric conditions. Subsequently, the Office of Judges again affirmed the claims administrator's denial of a request for a psychiatric consultation and treatment, finding the referral for psychiatric treatment and evaluation was not reasonable and necessary medical treatment for the compensable injuries. The Office of Judges noted that while the compensable injuries occurred on May 14, 2003, Ms. Jones did not complain of depression symptoms until 2009. Additionally, the Office of Judges noted that the 2006 psychiatric evaluation found no compensable psychiatric diagnosis. The Board of Review affirmed both Office of Judges Orders in its decisions of January 11, 2011.

Consistent with *Hale v. West Virginia Office of Ins. Comm'r.*, 228 W.Va. 781, 724 S.E.2d 752 (2012), Ms. Jones needs an initial consultation as outlined in the three step process contained in West Virginia Code of State Rules § 85-20-12.4 (2005). Possible symptoms of depression did not manifest until 2009, thus the 2006 evaluation was premature on the issue of possible depression.

For the foregoing reasons, we find that the decision of the Board of Review is clearly the result of erroneous conclusions of law. Therefore, the Board of Review Orders are reversed and remanded for a psychiatric evaluation pursuant to *Hale* and West Virginia Code of State Rules § 85-20-12.4

Reversed and Remanded.

ISSUED: September 14, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin J. Davis
Justice Margaret L. Workman
Justice Thomas E. McHugh

DISSENTING:

Justice Brent D. Benjamin