

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

October 31, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

ANNETTE M. STOOPS, Petitioner

vs.) No. 11-0402 and 11-0403 (BOR Appeal Nos. 2044965 and 2044966)
(Claim No. 2004028309)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
GRANDADS MARKET, INC., Respondent**

MEMORANDUM DECISION

Petitioner Annette M. Stoops, by George Zivkovich, her attorney, appeals the decisions of the West Virginia Workers' Compensation Board of Review. The West Virginia Office of Insurance Commissioner, by Jack Rife, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Orders dated February 15, 2011¹, in which the Board affirmed August 4, 2010, and August 23, 2010, Orders of the Workers' Compensation Office of Judges. In its Orders, the Office of Judges affirmed the claims administrator's August 4, 2009, and April 22, 2010, decisions denying Ms. Stoops's requests for medical 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 and the relevant decisions 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. Stoops was employed with Grandads Market, Inc. when she injured her lower back while refilling a soda machine on December 14, 2003. The claim was held compensable for displaced lumbar intervertebral disc and sprain/strain of the lumbosacral spine on January 26, 2004. It was noted during a February 26, 2004, neurosurgical consultation that diagnostic

¹ Pursuant to an Order entered on September 7, 2012, this Court has consolidated Case Nos. 11-0402 and 11-0403 for purposes of consideration and decision.

imaging performed shortly after the injury revealed degenerative changes in Ms. Stoops's lumbar spine. On March 1, 2004, an electrodiagnostic study was performed and did not reveal current evidence of radiculopathy. On June 9, 2004, Dr. Bachwitt performed an independent medical evaluation and found that Ms. Stoops had reached maximum medical improvement.

In its August 4, 2010, and August 23, 2010, Orders affirming August 4, 2009, and April 22, 2010, claims administrator's decisions, the Office of Judges held that the preponderance of the evidence does not support the authorization of Ms. Stoops's requests for a bilateral EMG/NCS of the lower extremities, a lumbar discogram, and bilateral sacroiliac epidural joint injections. Ms. Stoops disputes this finding and asserts that the evidence of record demonstrates that she is entitled to the requested medical benefits.

The Office of Judges noted that Dr. Bachwitt found Ms. Stoops to be at maximum medical improvement in 2004, and found that her requests for medical benefits were made several years after she reached maximum medical improvement. The Office of Judges noted that Ms. Stoops underwent an electrodiagnostic study in 2004, as well as other extensive diagnostic imaging, and found that it would not be prudent to authorize the EMG and discogram when the previous study failed to reveal evidence of radiculopathy. Additionally, it would not be prudent to authorize the epidural joint injections when prior diagnostic imaging revealed no evidence of radicular symptoms. Further, the Office of Judges found that Ms. Stoops was involved in a 2007 motor vehicle accident, and required surgery on her cervical spine as a result of the injuries she sustained. Finally, the Office of Judges noted that Ms. Stoops's requests for medical benefits appear to arise primarily from preexisting degenerative changes noted in diagnostic imaging taken shortly after the work-related accident, and may also be attributable in part to the 2007 motor vehicle accident. The Board of Review reached the same reasoned conclusions in its decisions of February 15, 2011. We agree with the reasoning and conclusions of the Board of Review.

For the foregoing reasons, we find that the decisions of the Board of Review are not in clear violation of any constitutional or statutory provision, nor are they clearly the result of erroneous conclusions of law, nor are they based upon a material misstatement or mischaracterization of the evidentiary record. Therefore, the decisions of the Board of Review are affirmed.

Affirmed.

ISSUED: October 31, 2012

CONCURRED IN BY:

Justice Robin J. Davis
Justice Margaret L. Workman
Justice Thomas E. McHugh

DISSENTING:

Chief Justice Menis E. Ketchum
Justice Brent D. Benjamin