

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

November 7, 2013

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

**SENGSONG T. LIN,
Claimant Below, Petitioner**

vs.) **No. 12-0220** (BOR Appeal No. 2046161)
(Claim No. 2010115810)

**RACING CORPORATION OF WV,
Employer Below, Respondent**

MEMORANDUM DECISION

Petitioner Sengsong T. Lin, by Patrick Kevin Maroney, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. The Racing Corporation of WV, by Steven K. Wellman, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated January 30, 2012, in which the Board affirmed a June 24, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's December 10, 2009, decision rejecting the claim. The Court has carefully reviewed the records, written arguments, and appendices contained in the briefs, and the case is mature for consideration.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Rules of Appellate Procedure.

Ms. Lin worked as a card dealer for Racing Corporation of WV. On November 18, 2009, Ms. Lin was dealing blackjack and reached out to get a chip when she allegedly felt a shock of pain in her left shoulder, through her left elbow, and into her pinky. Her back and ribs then began to hurt. Ms. Lin went to CAMC Urgent Care Center for treatment and was found to have significant gallbladder problems including mild constipation and non-specific pelvic calcification. On November 21, 2009, she had a cholecystectomy to correct her gallbladder problems. She also received a CT scan and an MRI within the next few days which showed mild degenerative changes in her cervical spine, a tiny disc protrusion at L5-S1, and a small tear at the

L4-5 disc. Ms. Lin was also admitted to St. Francis Hospital complaining of abdominal pain and back pain. None of the hospital records from either CAMC's Urgent Care Center or St. Francis Hospital referred to an accident or traumatic event which caused her symptoms. But Ms. Lin filed an application for workers' compensation benefits. On December 10, 2009, the claims administrator rejected her claim, stating that Ms. Lin did not suffer an injury in the course of or resulting from her employment. On June 24, 2011, the Office of Judges affirmed the claims administrator's decision. The Board of Review then affirmed the Order of the Office of Judges on January 30, 2012, leading Ms. Lin to appeal.

The Office of Judges concluded that the claim was not compensable. The Office of Judges found that Ms. Lin had a myriad of health problems on November 18, 2009. The Office of Judges found that Ms. Lin had become acutely ill while at work but that there was no persuasive evidence that the illness occurred as a result of or in the course of her employment as a card dealer. The Office of Judges found that Ms. Lin had multilevel degenerative disc disease which pre-existed the date of the alleged injury. The Office of Judges also found that Ms. Lin had a malfunctioning gallbladder, which required an emergency cholecystectomy, but was not work-related. The Board of Review adopted the findings of the Office of Judges and affirmed its Order.

We agree with the conclusions of the Board of Review and the findings of the Office of Judges. Ms. Lin has not demonstrated that she suffered an injury in the course of and resulting from her employment. The evidence of the record demonstrates that Ms. Lin suffered from pre-existing degenerative diseases and gallbladder problems. Neither condition was developed as a result of Ms. Lin's employment.

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 decision of the Board of Review is affirmed.

Affirmed.

ISSUED: November 7, 2013

CONCURRED IN BY:

Chief Justice Brent D. Benjamin

Justice Robin J. Davis

Justice Margaret L. Workman

Justice Menis E. Ketchum

Justice Allen H. Loughry II