

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

December 19, 2013

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

PATRICIA J. HUTCHINSON,
Claimant Below, Petitioner

vs.) **No. 12-0506** (BOR Appeal No. 2046165)
(Claim No. 2010101227)

SUMMERSVILLE MEMORIAL HOSPITAL,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Patricia J. Hutchinson, by John Shumate Jr., her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Summersville Memorial Hospital, by Daniel Murdock, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated March 27, 2012, in which the Board affirmed a June 23, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's January 6, 2011, decision denying Ms. Hutchinson's request to reopen the claim for further consideration of temporary total disability benefits. 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. Hutchinson injured her lower back on July 29, 2009, while working with a patient. Following the injury, Ms. Hutchinson was treated by Dr. Wantz who noted that she has a history of chronic low back pain as well as a prior back injury. On August 4, 2009, Dr. Wantz diagnosed Ms. Hutchinson with sprains and strains of the sacroiliac and lumbosacral region. An August 31, 2009, MRI revealed foraminal stenosis, spinal stenosis, and nerve root compression. On January 28, 2010, Dr. Wantz stated that the August 31, 2009, MRI and an MRI performed in 2007 have similar findings. She diagnosed Ms. Hutchinson with a disc bulge in her lumbar spine and mild

to moderate spinal stenosis. On July 9, 2010, Dr. Wantz stated that Ms. Hutchinson became temporarily and totally disabled on August 21, 2009, and remains temporarily and totally disabled. On January 6, 2011, the claims administrator denied Ms. Hutchinson's request to reopen the claim for further consideration of temporary total disability benefits.

In its Order affirming the claims administrator's January 6, 2011, decision, the Office of Judges held that the preponderance of the evidence demonstrates that Ms. Hutchinson is not entitled to a reopening of the claim on a temporary total disability basis. Ms. Hutchinson disputes this finding and asserts, per the opinion of Dr. Wantz, that she is entitled to temporary total disability benefits from October 21, 2009, through July 9, 2010.

In Memorandum Decision Number 10-4021, this Court affirmed a closure of Ms. Hutchinson's claim for temporary total disability benefits. The only additional evidence presented in the instant case that was not considered in the prior decision is a diagnosis update requesting that spinal stenosis and lumbar disc disease be added as compensable components of the claim, a treatment note from Dr. Wantz stating that Ms. Hutchinson should have a neurosurgical evaluation, and Dr. Wantz's statement that Ms. Hutchinson was temporarily and totally disabled. The Office of Judges found that this evidence does not establish that a progression or aggravation of the compensable injury has occurred, as is necessary for a reopening of the claim pursuant to West Virginia Code § 23-5-3 (2009). The Board of Review affirmed the reasoning and conclusions of the Office of Judges in its decision of March 27, 2012. We agree with the reasoning and conclusions of the Office of Judges.

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: December 19, 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