

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

October 15, 2014

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

KELLY WILT,
Claimant Below, Petitioner

vs.) **No. 13-0548** (BOR Appeal No. 2047739)
(Claim No. 2011035872)

CITY HOSPITAL, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Kelly Wilt, by Robert L. Stultz, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. City Hospital, Inc., by Lisa W. Hunter, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated April 23, 2013, in which the Board affirmed a September 21, 2012, Order of the Workers' Compensation Office of Judges. The Office of Judges affirmed the claims administrator's July 5, 2011, 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. Wilt worked for City Hospital, Inc., as a CT scan technician. Ms. Wilt had a significant history of neck, back, and shoulder problems. On March 26, 2011, she pulled a patient across a table in preparation for a CT scan and allegedly experienced pain in her neck and shoulders. Following this onset of pain, Ms. Wilt was treated by Charles Winters, M.D., who found that she had constant pain in her neck, back, and shoulder. Dr. Winters determined that her pain began ten years earlier and that her symptoms were not the result of an injury. Dr. Winters diagnosed Ms. Wilt with several chronic conditions, including cervical spondylosis and degeneration of an unspecified intervertebral disc. Ms. Wilt was then seen at the emergency

room of West Virginia University Hospital and was diagnosed with an exacerbation of chronic neck pain and right upper extremity radiculopathy. Ms. Wilt filed an application for workers' compensation benefits based on the March 26, 2011, incident. On July 5, 2011, the claims administrator rejected the claim, stating that Ms. Wilt merely sustained an exacerbation of a pre-existing active condition. On September 21, 2012, the Office of Judges affirmed the claims administrator's decision. The Board of Review affirmed the Order of the Office of Judges on April 23, 2013, leading Ms. Wilt to appeal.

The Office of Judges concluded that Ms. Wilt did not sustain an injury in the course of and resulting from her employment. The Office of Judges determined that Ms. Wilt had chronic neck, back, and shoulder problems which began ten years prior to the date of the alleged injury. The Office of Judges based this determination on the treatment notes of Dr. Winters, who diagnosed Ms. Wilt with several chronic and non-compensable conditions. The Office of Judges further found that Ms. Wilt did not demonstrate that she sustained an acute injury that caused any symptoms that were distinguishable from her chronic symptoms. It pointed out that Dr. Winters did not find evidence of an acute injury. The Office of Judges further noted that Ms. Wilt had received treatment immediately prior to the alleged date of injury related to her chronic conditions and her symptoms did not change after the alleged date of injury. 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. Wilt has not demonstrated that she sustained an injury in the course of and resulting from her employment. The evidence in the record shows that Ms. Wilt has a significant history of neck, shoulder, and upper back pain. The record shows that Ms. Wilt received treatment for her chronic conditions immediately prior to the date of the alleged injury, and her current symptoms are consistent with her symptoms throughout her prior medical history. There is no medical evidence indicating that she suffered an injury.

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: October 15, 2014

CONCURRED IN BY:

Chief Justice Robin J. Davis
Justice Brent D. Benjamin
Justice Menis E. Ketchum
Justice Allen H. Loughry II

DISSENTING:

Justice Margaret L. Workman