

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

October 7, 2015

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

**KATRINA WYNES,
Claimant Below, Petitioner**

vs.) **No. 15-0055** (BOR Appeal No. 2049596)
(Claim No. 2014022985)

**BECKLEY APPALACHIAN REGIONAL HEALTHCARE,
Employer Below, Respondent**

MEMORANDUM DECISION

Petitioner Katrina Wynes, by Reginald Henry, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Beckley Appalachian Regional Healthcare, by H. Dill Battle III, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated December 23, 2014, in which the Board affirmed a July 14, 2014, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's April 22, 2014, decision rejecting Ms. Wynes's application for workers' compensation 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.

On January 15, 2014, Ms. Wynes completed an application for workers' compensation benefits alleging that she sustained an injury to her lower back on November 14, 2013, while performing her regular duties as a certified nursing assistant. The physician's portion of the application was completed by Harold Flescher, D.C., Ms. Wynes's chiropractor. Dr. Flescher noted that Ms. Wynes reported injuring her lower back while lifting a patient who required complete care and listed her diagnoses as a lumbar sprain, a sacroiliac sprain, thoracic and lumbosacral radiculitis, and disturbance of skin sensation. Prior to the completion of her

application for workers' compensation benefits, Ms. Wynes filed a request for long-term disability benefits pursuant to the Family Medical Leave Act on December 3, 2013. On her application for long-term disability benefits, Ms. Wynes indicated that her disability was not caused by an accident but stated that she assumes her disability is attributable to her work as a certified nursing assistant and that it occurred over a very long period of time.

Prior to the alleged injury, Ms. Wynes received treatment from Jeffrey Greenberg, M.D., who noted on February 25, 2013, that Ms. Wynes has been experiencing ongoing back pain for the last eight months. Dr. Greenberg began treating Ms. Wynes with lumbar facet injections on March 6, 2013, and was continuing to treat her with a combination of lumbar facet injections and the medication Neurontin at the time of the alleged injury. Dr. Greenberg's treatment with the medication Neurontin and lumbar facet injections continued in the months following the alleged injury. The claims administrator denied Ms. Wynes's application for workers' compensation benefits on April 22, 2014.

On June 6, 2014, Prasadarao Mukkamala, M.D., performed a records review. He diagnosed Ms. Wynes with longstanding lower back pain and opined that her medical records do not support the conclusion that a discreet work-related injury occurred on November 14, 2013. Dr. Mukkamala noted that Ms. Wynes has a longstanding history of back problems for which she was receiving treatment prior to the alleged injury. He further opined that the symptoms of which she complains with relation to the alleged injury are instead a continuation of pre-existing symptoms for which she was already receiving treatment. Finally, Dr. Mukkamala opined that lumbar spine MRIs obtained before and after the alleged incident reveal very similar degenerative findings which are clearly pre-existing.

On June 17, 2014, Ms. Wynes testified at a hearing before the Office of Judges. She testified that she injured her lower back between ten and eleven o'clock in the morning on November 14, 2013, while caring for an unresponsive patient. Ms. Wynes acknowledged that when she initially sought medical treatment following the alleged incident, she did not report sustaining any type of injury and told her healthcare providers only that she was suffering from lower back pain. Furthermore, Ms. Wynes acknowledged that she filed a request for long-term disability benefits prior to filing an application for workers' compensation benefits, and testified that she chose to file an application for workers' compensation benefits after Beckley Appalachian Regional Healthcare's human resources department informed her that her health insurance benefits would terminate if she filed for long-term disability benefits.

In its Order affirming the April 22, 2014, claims administrator's decision, the Office of Judges held that the preponderance of the evidence indicates that Ms. Wynes did not sustain an injury in the course of and resulting from her employment on November 14, 2013. The Board of Review affirmed the reasoning and conclusions of the Office of Judges in its decision dated December 23, 2014. On appeal, Ms. Wynes asserts that the evidence of record demonstrates that she sustained an injury in the course of her employment on November 14, 2013, while providing care to a patient, and requests that her claim for workers' compensation benefits be held compensable for a lumbar sprain and acute right radiculopathy.

The Office of Judges found that although Ms. Wynes asserts that she experienced an onset of lower back pain on November 14, 2013, while caring for a patient, the medical evidence of record firmly establishes that she has a longstanding history of lower back pain and was receiving ongoing medical treatment for lower back pain in the form of lumbar facet injections and the medication Neurontin up to the alleged date of injury. The Office of Judges further found that the medical evidence of record establishes that Ms. Wynes's reported symptoms following the alleged injury are very similar to the symptoms she reported prior to the alleged injury, namely lower back pain radiating into the right leg with occasional tingling and numbness in the right foot. Additionally, the Office of Judges took note of Dr. Mukkamala's finding that Ms. Wynes's current symptoms are simply a continuation of symptoms that pre-existed the alleged injury and for which she was already receiving treatment. Further, the Office of Judges noted that treatment notes received from Ms. Wynes's healthcare providers dating to the weeks immediately following the alleged injury make no mention of a possible work-related injury. The Office of Judges then concluded that the medical evidence of record does not support a finding that Ms. Wynes sustained a work-related injury on November 14, 2013.

Further, the Office of Judges found that in addition to the medical evidence of record, Ms. Wynes has offered contradictory statements regarding the alleged November 14, 2013, injury. The Office of Judges noted that before filing an application for workers' compensation benefits, Ms. Wynes applied for long-term disability benefits. The Office of Judges then found that the medical evidence of record indicates that the diagnoses for which she was seeking long-term disability benefits, namely lumbar canal stenosis, lumbar disc bulging, and lumbar disc space narrowing with disc degeneration, pre-date the alleged November 14, 2013, injury. Additionally, the Office of Judges noted that Ms. Wynes indicated on her application for long-term disability benefits that her lower back condition was not the result of an accident and found that this statement is at odds with her testimony and completed application for workers' compensation benefits in which she stated that she sustained an injury on November 14, 2013, while caring for a patient. Moreover, the Office of Judges took note of Ms. Wynes's testimony that she decided to file an application for workers' compensation benefits only after being informed that her health insurance coverage would not continue if she received long-term disability benefits. Finally, the Office of Judges concluded that the evidence of record suggests that the lower back pain experienced by Ms. Wynes on November 14, 2013, was merely a continuation of her longstanding lower back symptoms relating to pre-existing conditions rather than an isolated work-related injury. We agree with the reasoning and conclusions of the Office of Judges as affirmed by the Board of Review.

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 7, 2015

CONCURRED IN BY:

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