

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

WILMA L. SOTO
Claimant Below, Petitioner

vs.) **No. 17-0382** (BOR Appeal No. 2051702)
(Claim No. 2015029346)

WELCH EMERGENCY HOSPITAL,
Employer Below, Respondent

FILED

November 22, 2017
EDYTHE NASH GAISER, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Ms. Soto seeks workers' compensation benefits for carpal tunnel syndrome. The claims administrator denied the claim on July 24, 2015. The Workers' Compensation Office of Judges issued a Decision dated November 22, 2016, affirming the claims administrator's July 24, 2015, Order which denied the application for benefits. This appeal arises from the Board of Review's Final Order dated March 21, 2017, in which the Board affirmed the November 22, 2016, Order of the Office of Judges. The Court has carefully reviewed the records, written arguments, and appendices contained in the briefs, and the case is mature for consideration. 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, we affirm the decision of the Board of Review.

Ms. Soto completed a West Virginia Workers' Compensation Employees' and Physicians' Report of Occupational Injury or Disease form on May 5, 2015, alleging an occupational disease of bilateral carpal tunnel syndrome. She is employed with Welch Community Hospital as an Accounting Technician III, which is a clerical position. As an Accounting Technician III, Ms. Soto is responsible for processing patient accounting, general ledgers, and postings by the data processing department and examining records to assure adherence to accounting laws and regulations. She is also responsible for performing accounting support duties, preparing bank deposits, and adjusting entries to the ledger. She stated that she was experiencing numbness in her hand, wrist, arm, shoulder and neck. Ms. Soto attributed her wrist, arm, shoulder, and neck problems to her clerical duties.

Ms. Soto sought treatment with Syed Zahir, M.D., on March 10, 2015. In his report, Dr. Zahir documented that Ms. Soto had been experiencing pain and numbness of the right hand for several months. Dr. Zahir noted that she worked as a billing person and had been performing a

considerable amount of repetitive work with her hands. He diagnosed Ms. Soto with bilateral carpal tunnel syndrome, hypertension, hypothyroidism, and diabetes mellitus. Dr. Zahir ordered EMG studies for both hands and provided her with stretching exercises and braces to be worn at night.

On May 29, 2015, the claims administrator denied Ms. Soto's application for benefits. Although Dr. Zahir had provided a diagnosis of carpal tunnel syndrome, the claims administrator stated that there was no supporting medical documentation confirming the diagnosis was in relation to Ms. Soto's employment. By updated Order dated July 24, 2015, the claims administrator denied the application for benefits as it was determined that Ms. Soto did not sustain an injury in the course of and resulting from her employment. Ms. Soto protested the rejection of her claim.

Ms. Soto's June 24, 2015, EMG test was abnormal; however, there was no evidence of carpal tunnel syndrome on either side. The test revealed electrophysiologic evidence for mild bilateral ulnar neuropathy at the elbows. There was no electrophysiologic evidence for right cervical radiculopathy or median mononeuropathy (carpal tunnel syndrome) on either side.

The deposition of Dr. Zahir was taken on March 15, 2016. He testified that he believed Ms. Soto had bilateral carpal tunnel syndrome based upon her indication of numbness in the wrists, waking at night, and dropping things with her right hand. He also reported a positive Phalen's and Tinel's test on the right. Dr. Zahir described the carpal tunnel syndrome as moderate on both sides. Dr. Zahir undertook bilateral releases of the median nerve/carpal tunnel release on the right and left on August 19, 2015, and November 2, 2015. He reported that Ms. Soto experienced significant improvement of her symptoms after surgery.

Prasadarao Mukkamala, M.D., performed a review of Ms. Soto's records and filed a report dated July 12, 2016. Dr. Mukkamala stated that there was no conclusive evidence that she had carpal tunnel syndrome. While the symptoms were suggestive of carpal tunnel syndrome, electrodiagnostic testing was negative for the disease. Dr. Mukkamala opined that the alleged carpal tunnel syndrome is not causally related to Ms. Soto's employment as an Accounting Technician III. He stated that her position presented no occupational risk factors, but she possessed several non-occupational risk factors for carpal tunnel syndrome. The non-occupational risk factors included an increased body mass index, hypothyroidism, and diabetes.

On November 22, 2016, the Office of Judges found that it is more likely than not that Ms. Soto does not have work-related carpal tunnel syndrome. The Office of Judges reasoned that her EMG did not reveal that she suffers from carpal tunnel syndrome. It was also noted that Ms. Soto has several of the confounding conditions, including diabetes and hypothyroidism, which frequently produce or contribute to carpal tunnel syndrome, according to West Virginia Code of State Rules § 85-20-41.4 (2006). The Office of Judges concluded that the type of data entry work performed by Ms. Soto does not fit the described activities listed in the Rules. The Office of Judges affirmed the claims administrator's decision.

The Board of Review affirmed the Order of the Office of Judges on March 21, 2017. We agree with the decision of the Board of Review. On appeal, Ms. Soto, by Jerome J. McFadden, her attorney, argues that she performs more than clerical duties and is entitled to benefits for carpal tunnel syndrome. Welch Emergency Hospital, by Lisa Warner Hunter, its attorney asserts that the objective medical evidence supports the decision to deny the claim for carpal tunnel syndrome. After reviewing the record, the evidence does not establish a connection between Ms. Soto's work duties and her diagnosis of carpal tunnel syndrome.

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 22, 2017

CONCURRED IN BY:

Chief Justice Allen H. Loughry II

Justice Robin J. Davis

Justice Margaret L. Workman

Justice Menis E. Ketchum

Justice Elizabeth D. Walker