

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

September 13, 2019
EDYTHE NASH GAISER, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

DIANA KITCHEN,
Claimant Below, Petitioner

vs.) **No. 18-0868** (BOR Appeal No. 2052824)
(Claim No. 2016030845)

MINGO COUNTY BOARD OF EDUCATION,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Diana Kitchen, by Anne L. Wandling, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Mingo County Board of Education, by Jillian L. Moore, its attorney, filed a timely response.

The issue on appeal is compensability. The claims administrator rejected the claim on January 30, 2017. The Office of Judges affirmed the decision in its April 11, 2018, Order. The Order was affirmed by the Board of Review on September 26, 2018.

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, 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. Kitchen, a teacher, alleges that she developed carpal tunnel syndrome in the course of and resulting from her employment. An EMG taken on July 3, 2014, revealed carpal tunnel syndrome and ulnar nerve damage. The Employees' and Physicians' Report of Occupational Disease was completed on July 26, 2014, and states that Ms. Kitchen was a teacher for twenty-six years. She stated that her job required her to repeatedly lift, tug, and pull on objects. She had to type on a computer, make lesson plans, and respond to emails. She also had to staple papers and lift desks, books, copiers, and computers. Additionally, she logged in students for lunch. She stated that her hands and arms go numb and she drops objects. Abnu Nadar, M.D., completed the physician's section and diagnosed bilateral carpal and cubital tunnel syndromes.

An August 20, 2014, treatment note by Dr. Nadar indicates Ms. Kitchen reported pain and numbness in both hands. She stated that her job required the repetitive use of her hands. An EMG showed bilateral carpal tunnel syndrome. Dr. Nadar diagnosed bilateral carpal and cubital tunnel syndromes.

Prasadarao Mukkamala, M.D., performed an independent medical evaluation on January 26, 2017, in which he opined that while Ms. Kitchen's symptoms are suggestive of carpal tunnel syndrome, the EMG was not conclusive for the condition. He further opined that if she does have carpal tunnel syndrome, it is not the result of her job duties. He found that Ms. Kitchen's job does not involve the degree of repetition and/or force required to cause carpal tunnel syndrome. Further, though she alleges that she had the symptoms for ten years, she did not seek treatment while she was working, and she retired due to other medical conditions. Dr. Mukkamala further opined that Ms. Kitchen is obese, which is a very significant non-occupational risk factor for developing carpal tunnel syndrome. Dr. Mukkamala noted that he disagreed with the EMG findings of ulnar nerve pathology as his review of the EMG indicated the study was suboptimal.

Ms. Kitchen testified in an April 21, 2017, deposition that she worked as a teacher for twenty-six or twenty-seven years. She stated that she did a lot of typing, made lesson plans, and handled and stapled large packets of paper. She started having problems with her hands ten years before she retired and the symptoms gradually worsened over time. Ms. Kitchen testified that her hands would go numb and she experienced pain in her thumb. She also started having numbness in her elbows and had difficulty picking things up.

In an August 14, 2017, independent medical evaluation, Bruce Guberman, M.D., diagnosed bilateral carpal and cubital tunnel syndromes as a result of repeated trauma at work. Dr. Guberman reviewed Ms. Kitchen's work activities and concluded that they were the cause of her carpal and cubital tunnel syndromes. He stated that the EMG confirmed his diagnoses. He believed Ms. Kitchen had reached maximum medical improvement and assessed 16% impairment.

Marsha Bailey, M.D., performed an independent medical evaluation on November 6, 2017, in which she diagnosed bilateral carpal tunnel syndrome. However, at the time of the evaluation, Ms. Kitchen had no physical examination findings to support the diagnosis. Dr. Bailey strongly opined that her carpal tunnel syndrome is unrelated to her job duties. Her job did not require the kind of forceful and repetitive activities known to cause carpal tunnel syndrome. Dr. Bailey noted that carpal tunnel syndrome is a common disease, that obesity is a risk factor for the condition, and that it was likely the cause of Ms. Kitchen's carpal tunnel syndrome. Dr. Bailey disagreed with Dr. Guberman's opinion and noted that clerical duties, such as hers, do not cause carpal tunnel syndrome. She found that Dr. Guberman's opinion was in conflict with the extensive body of medical literature regarding the causality of carpal tunnel syndrome.

The claims administrator rejected the claim on January 30, 2017. The Office of Judges affirmed the decision in its April 11, 2018, Order. It found that the evidence supports a diagnosis of carpal tunnel syndrome, but it questioned the diagnosis of cubital tunnel syndrome. The Office of Judges found that Dr. Nadar did not express an opinion regarding whether Ms. Kitchen's symptoms are the result of her occupational duties. He did, however, mark work-related disease

on the application for benefits. The Office of Judges made note of the fact that Ms. Kitchen completed her application on July 26, 2014, but did not file it until June of 2016. It further noted that per West Virginia Code of State Rules § 85-20-41.2 (2006), half of all carpal tunnel cases are idiopathic. West Virginia Code of State Rules § 85-20-41.4 lists medical conditions frequently contributing to or causing carpal tunnel syndrome, of which obesity is included. Finally, West Virginia Code of State Rules § 85-20-41.5 lists occupational groups at higher risk for carpal tunnel syndrome and states that studies have failed to show a relationship between carpal tunnel syndrome and clerical activities.

The Office of Judges concluded that Ms. Kitchen's work activities were not the type that place her at higher risk for developing carpal tunnel syndrome as they were mainly clerical in nature and did not involve the kind of repetitive, high impact movements known to cause carpal tunnel syndrome. Additionally, she is obese, which is a condition that is listed as causing or contributing to carpal tunnel syndrome. The Office of Judges decided that Dr. Bailey's report was comprehensive and her conclusion that Ms. Kitchen did not develop carpal tunnel syndrome as a result of her job duties was well supported by the evidentiary record. The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its Order on September 26, 2018.

After review, we agree with the reasoning and conclusions of the Office of Judges as affirmed by the Board of Review. Both Drs. Mukkamala and Bailey concluded that Ms. Kitchen's job duties are not sufficient to cause the development of carpal or cubital tunnel syndrome. Her job mainly consists of clerical work, which is noted in West Virginia Code of State Rules § 85-20-41 as the type of job duties that do not cause carpal tunnel syndrome. Ms. Kitchen also failed to prove by a preponderance of the evidence that her job duties led her to develop cubital 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: September 13, 2019

CONCURRED IN BY:

Chief Justice Elizabeth D. Walker
Justice Margaret L. Workman
Justice Tim Armstead
Justice Evan H. Jenkins
Justice John A. Hutchison