

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

DEBRA K. BOOKER, Petitioner

March 26, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 101481 (BOR Appeal No. 2044524)
(Claim No. 2008034970)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
HIGHLAND BEHAVIORAL HEALTH SERVICES, INC.,
Respondent**

MEMORANDUM DECISION

Petitioner Debra K. Booker, by E. William Harvit, her attorney, appeals the decision of the Board of Review. Highland Behavioral Health Services, by T. Jonathan Cook, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated October 19, 2010, in which the Board reversed a May 6, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the claims administrator's March 21, 2008, decision denying the compensability of Ms. Booker's bilateral carpal tunnel syndrome claim. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this matter is appropriate for consideration under the Revised Rules. Having considered the petition and the relevant decision of the lower tribunal, the Court is of the opinion that the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the Court determines that there is no prejudicial error. This case does not present a new or significant question of law. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

In its Order reversing the decision of the Office of Judges, the Board of Review held that Ms. Booker's bilateral carpal tunnel syndrome claim is not compensable. Ms. Booker disputes this finding and asserts, per the opinions of Dr. Portillo and Dr. Westfall, that she developed bilateral carpal tunnel syndrome because of the nature of her occupation.

The Board of Review noted that, in contrast to the opinions of Dr. Portillo and Dr. Westfall, Dr. Mukkamala and Dr. Bailey found that Ms. Booker's carpal tunnel syndrome is unrelated to her occupation. The Board of Review relied on W. Va. Code R. § 85-20-41.4 (2006), which provides in part that "diabetes mellitus, hypothyroidism, obesity, alcohol abuse, rheumatoid arthritis, postural abnormalities and other conditions can precipitate carpal tunnel syndrome symptoms". The Board of Review also relied on W. Va. Code R. § 85-20-41.5 (2006), which provides that:

Occupational groups at high risk for carpal tunnel syndrome have included grinders, butchers, grocery store workers, frozen food factory workers, manufacturing workers, dental hygienists, platers and workers with high force, high repetitive manual movement. The literature notes a high prevalence of concurrent medical conditions capable of causing carpal tunnel syndrome in persons with the syndrome, without regard to any particular occupation. Studies have failed to show a relationship between normal clerical activities and carpal tunnel syndrome. When evaluating carpal tunnel syndrome in this work setting, a careful search for other contributing factors is essential. Awkward wrist positioning, vibratory tools, significant grip force, and high force of repetitive manual movements have all been shown to contribute to carpal tunnel syndrome.

The Board of Review found that Ms. Booker's job duties do not fall within the high risk groups listed in W. Va. Code R. § 85-20-41.5, and that her medical history included risk factors that can precipitate carpal tunnel syndrome symptoms. The Board of Review then found that the preponderance of the evidence failed to demonstrate that Ms. Booker's carpal tunnel syndrome had any direct causal relationship with her occupation.

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 the Board's material misstatement or mischaracterization of the evidentiary record. Therefore, the decision of the Board of Review is affirmed.

Affirmed.

ISSUED: March 26, 2012

CONCURRED IN BY:

Justice Robin J. Davis
Justice Brent D. Benjamin
Justice Thomas E. McHugh

DISSENTING:

Chief Justice Menis E. Ketchum
Justice Margaret L. Workman