

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

MELODY SUMPTER,
Claimant Below, Petitioner

vs.) **No. 18-1015** (BOR Appeal No. 2052952)
(Claim No. 2018003293)

SHOE SHOW, INC.,
Employer Below, Respondent

FILED

January 24, 2020
EDYTHE NASH GAISER, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Melody Sumpter, by Counsel Reginald D. Henry, appeals the decision of the West Virginia Workers' Compensation Board of Review ("Board of Review"). Shoe Show, Inc., by Counsel Lindsey Brennan, filed a timely response.

The issue on appeal is the compensability of the claim. On September 7, 2017, the claims administrator rejected the claim and stated that it found that Ms. Sumpter had not suffered a compensable work injury. The Office of Judges affirmed the claims administrator's decision on May 17, 2018. This appeal arises from the Board of Review's Final Order dated October 22, 2018, in which the Board affirmed the May 17, 2018, decision by the Office of Judges.

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. Sumpter alleges that on July 28, 2017, while working at Shoe Show, Inc., she suffered an allergic reaction to an unknown substance possibly related to her handling of cleats. While handling the cleats, Ms. Sumpter claims that she developed a headache, swelling, redness, and shortness of breath. She left the store and went next door to Wal-Mart where she purchased some Benadryl. She took the medication; however, the Benadryl did not relieve her symptoms. She directly reported her illness and left the store before completing her shift. She then sought treatment at the Emergency Department of Plateau Medical Center with complaints of extreme itching. The diagnosis was acute allergic reaction, anaphylaxis, angioedema, and urticaria. Although she was discharged, she returned later that evening with complaints of chest pain and nausea.

Prior medical records reveal that Ms. Sumpter has a history of allergies and was taking multiple prescriptions to address various health issues. An office note dated June 16, 2017, of Lora Keaveny, D.O., indicates that Ms. Sumpter was diagnosed with allergic rhinitis due to pollen. She sought treatment with Dr. Keaveny because she was coughing and coughing up blood. The condition was treated with Flonase. The record also reflects pre-existing anxiety and abnormal psychiatric presentation as recently as June 23, 2017, when she reported to Dr. Keaveny with complaints of pain in her arms and legs. Dr. Keaveny noted that she was continuing to use the nose spray. On July 20, 2017, Dr. Keaveny prescribed Victoza for Ms. Sumpter's diabetes. Other medications that she was prescribed were: Aspirin, Atenolol, Citalopram, Cyclobenzaprine, Dicyclomine, Fluticasone, Gemfibrozil, Ibuprofen, Losartan, Metformin, Nitrostat, Omega-3 acid, and Omeprazole.

On July 29, 2017, Ms. Sumpter completed an Employees' and Physicians' Report of Occupational Injury that reported that she was fixing cleats on the back wall (of the store) when she developed a headache, swelling, redness, and shortness of breath. She indicated that there were two witnesses to the incident. Section II of the form was completed by a staff member at Plateau Medical Center and indicated that she suffered an allergic reaction at work. On July 29, 2017, she was transferred from Plateau Medical Center to Raleigh General Hospital with a chief complaint of chest pain and allergic reaction. After an EKG, Ms. Sumpter underwent a cardiac catheterization. She was released from Raleigh General Hospital with a discharge impression of chest pain with positive stress test and allergic reaction of unknown etiology, as well as hypertension, hypercholesterolemia, and a history of irregular heart rate.

A progress note by Dr. Keaveny dated August 2, 2017, stated that Ms. Sumpter had a severe allergic reaction with itching, hives, and swelling in her throat. Dr. Keaveny reported that the "[p]atient does not know what she had an allergic reaction to." Ms. Sumpter complained of fatigue and abdominal pain. She also continued to have anxiety. Dr. Keaveny diagnosed coronary arteriosclerosis, anaphylaxis, anxiety, and mixed hyperlipidemia. She was to be referred to an allergy specialist.

Ms. Sumpter treated with the Asthma & Allergy Center on August 14, 2017, with Tarun M. Kumar, M.D. The major symptoms reported by Ms. Sumpter were itching, and stuffiness of the nose. Her eyes were itchy, red, and swollen. She reported a tension headache and hives on her skin. Dr. Kumar recorded Ms. Sumpter's medical issues and noted that she has a long history of allergic rhinitis, anaphylaxis, drug allergies, diabetes, and cardiac issues. He reported that she did not know what substance caused her to swell, itch, and have shortness of breath on July 28, 2017. Dr. Kumar prepared a plan that involved medication and instructions for Ms. Sumpter to keep a record of any exposure or symptoms.

Ms. Sumpter followed up with Dr. Keaveny on August 28, 2017. In her office note, Dr. Keaveny again reported that Ms. Sumpter was exposed to something while working that sent her to the emergency room with an anaphylactic reaction. Again, Ms. Sumpter stated that she did not know what substance caused her to swell, itch, and experience shortness of breath. Dr. Keaveny's

diagnosis was simply anaphylaxis due to substance, and she was given a prescription for an EpiPen. She was to return for a follow-up evaluation on September 1, 2017.

The claims administrator issued an Order dated September 7, 2017, in which the claims administrator rejected the claim and found that Ms. Sumpter had not suffered a compensable work-injury. Accordingly, the application for benefits was denied. The Order stated that the injury did not occur as an occupational disease as a result of Ms. Sumpter's employment. Ms. Sumpter protested the claims administrator's decision.

Ms. Sumpter was deposed on January 4, 2018. She testified that she was no longer employed and last worked for the employer in September 2017. She testified that when she went into work on July 28, 2017, she was in absolutely fine physical condition. Although she saw physicians for diabetes and heart issues, she testified that she had not been hospitalized for any of these conditions prior to July 2017. Ms. Sumpter said that at the time of her injury, she was taking stock from top shelves and filling in holes down below with boxes of shoes. She started bringing down football and soccer cleats when she developed a headache, and felt her mouth and eyes starting to swell. She said she was itching all over as if she were on fire and she was extremely hot. She left work and went to Wal-Mart to get a bottle of Benadryl. She returned to her workplace and reported her condition to Denise Price, the store manager, before leaving early. On her way home she took a wrong turn because she was confused. After vomiting and itching while at home, she sought treatment at Plateau Medical Center. She was discharged but later returned because she was ill. She recalled that she was in the hospital for several days. She testified that they started treating her heart due to a rapid heart rate problem which she had for several years, without hospitalization. She testified that since her discharge from Raleigh General Hospital, she has not had any more episodes. Ms. Sumpter testified that her co-workers, Denise Price and Samantha Thomas, also experienced similar allergic reactions. Ms. Sumpter testified that since she stopped working for the employer in September 2017, she has not had any itching problems.

Denise Price was deposed on January 4, 2018. Ms. Price testified that she was Ms. Sumpter's direct supervisor on July 28, 2017, when Ms. Sumpter broke out. Ms. Price stated that Ms. Sumpter was red and itchy all over while arranging cleats. Ms. Price indicated that Ms. Sumpter had also experienced some of the same symptoms she had experienced. Ms. Price's symptoms, however, did not occur until after Ms. Sumpter returned to work. Ms. Price also testified that one other employee broke out and was itching.

In a Decision dated May 17, 2018, the Office of Judges affirmed the September 7, 2017, claims administrator Order denying the claim for benefits. The Office of Judges found that Ms. Sumpter failed to prove by a preponderance of the evidence that she suffered any occupational disease or injury as a result of any occupational exposure to any substance to which the general public is not also exposed. The Office of Judges concluded that her claim of skin rash or other objective evidence of an allergic reaction is not substantiated, and that it is more likely than not that her problem only occurred at work, but was not a result of her work. In an Order dated October 22, 2018, the Board of Review adopted the findings of facts and conclusions of law of the Office of Judges and affirmed its decision.

We agree with the decision of the Board of Review. The evidence of record supports the finding of the Office of Judges that Ms. Sumpter did not prove by a preponderance of evidence that she suffered any occupational disease or injury as a result of any occupational exposure to any substance to which the general public is not also exposed. The medical evidence in this case is not clear that Ms. Sumpter suffered a work-related injury on July 28, 2017.

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: January 24, 2020

CONCURRED IN BY:

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

DISSENTING:

Justice Margaret L. Workman