

ORIGINAL

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

20020083

Supreme Court Case No. 2002-0083

Cass County Case No. 01 C 3209

Pamela Myhre,

Plaintiff/Appellant,

vs.

North Dakota Workers Compensation
Bureau,

Defendant/Appellee.

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

DEC 18 2002

STATE OF NORTH DAKOTA

PETITION FOR REHEARING

APPEAL FROM JUDGMENT OF CASS COUNTY DISTRICT COURT ENTERED ON FEBRUARY 14, 2002, PURSUANT TO THE MEMORANDUM OPINION AND ORDER OF THE DISTRICT COURT ENTERED ON FEBRUARY 5, 2002, AFFIRMING THE FINAL ORDER OF THE NORTH DAKOTA WORKERS COMPENSATION BUREAU OF SEPTEMBER 11, 2001, ADOPTING THE RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE REFEREE DATED AUGUST 31, 2001, DENYING PAMELA JO MYHRE WORKERS COMPENSATION BENEFITS FOR HER LOW BACK CONDITION AND HER CHEMICAL EXPOSURE.

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The Appellant, Pamela Myhre, pursuant to Rule 40 of the North Dakota Rules of Appellate Procedure, petitions the North Dakota Supreme Court for rehearing on the Court's judgment affirming the judgment of the District Court of Cass County, Central Judicial District, which affirmed an order awarding specific benefits by the North Dakota Workers Compensation Bureau.

The particular points of fact which this court has overlooked or misapprehended are as follows:

1. This court has stated in its opinion that Myhre failed to prove by a preponderance of the evidence a causal relationship between her employment and her back condition and indicated that its decision was based upon Myhre's history of back injury and back pain and a lack of specificity in the testimony of the treating chiropractor.

However, this court has misapprehended the record in that Myhre's claim is for her low back and there is no prior history of low back injuries or low back pain prior to Myhre starting her employment at Mac's. There are no medical records that indicate any low back pain or treatment for Myhre's low back prior to her starting her employment at Mac's. Myhre never received treatment for her low back prior to January 1999 and the prior

treatment was only for her neck and the thoracic or neck area of her back (CR pp. 604, 611, 626, 732, 744, 745).

The ALJ and the Bureau misapprehended the evidence when it indicated in its decision that the record was replete with references to claimant's pre-existing back condition and, unfortunately, the Supreme Court also misapprehended the medical evidence, which clearly shows that there is no pre-existing low back condition prior to Myhre's employment at Mac's and that she did not seek medical treatment for her low back condition until January 1999. Without this misapprehension of the evidence, Myhre has established that her low back condition is causally related to her employment at Mac's.

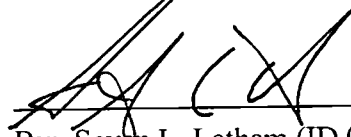
2. The second point that this court has misapprehended is the finding that the diagnosis and course of treatment by Dr. Rea of the Environmental Health Center was based upon testing that was not medically recognized or was not considered medically or scientifically valid. There is no evidence in the record that supports the Bureau's arriving at that conclusion. Myhre underwent a series of objective medical testing performed by experts in their field, including a SPECT image test, which creates a scan or image of the brain.

This court also did not address the inconsistencies and the Bureau's failure to address these inconsistencies between Dr. McCrary's opinion that Myhre has a severe psychiatric illness and the objective psychological testing done by Dr. Didriksen, a neuropsychologist and board certified in her field, who performed eight hours of psychological testing. Neither this court nor the Bureau explained this fundamental inconsistency. The Bureau is required to explain this fundamental inconsistency if it is going to rely on a nontreating or nonexamining physician, who performs only a medical review and arrives at a diagnosis of a psychiatric illness, particularly when the physician is an occupational medicine physician who arrives at a psychological cause for Myhre's problems and the Bureau ignores the psychological opinion of a treating neuropsychologist.

Myhre again respectfully requests that this court reconsider its prior decision and reverse the decision of the District Court and the decision of the Bureau that her low back condition and chemical poisoning are not causally related to her employment at Mac's.

Dated this 18 day of December, 2002.

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