

**STATE OF WEST VIRGINIA**

**SUPREME COURT OF APPEALS**

**FILED**

**JUDY C. PAYNTER,**  
**Claimant Below, Petitioner**

**August 2, 2011**  
**RORY L. PERRY II, CLERK**  
**SUPREME COURT OF APPEALS**  
**OF WEST VIRGINIA**

**vs.) No. 101082 (BOR Appeal No. 2044144)**  
**(Claim No. 2002023076)**

**WEST VIRGINIA OFFICE OF**  
**INSURANCE COMMISSIONER**  
**Commissioner Below, Respondent**

**and**

**APPALACHIAN REGIONAL HEALTHCARE, INC.,**  
**Employer Below, Respondent**

**MEMORANDUM DECISION**

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated August 10, 2010, in which the Board affirmed an February 9, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the Claims Administrator's January 29, 2009 order which granted claimant a 4% PPD award. The appeal was timely filed by the petitioner and a response was filed by the OIC. 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, the Office of Judges held the Petitioner was entitled to a 2% permanent partial disability award for the left shoulder based on Dr. Landis' report, deeming the additional 2% awarded by the claim administrator an overpayment. Ms. Paynter argues that the Office of Judges was wrong to give Dr. Landis' report greater weight. There were three physician reports submitted for consideration. Ms. Paynter relied on Dr. Carlson's May 8, 2008 report which recommended an 8% PPD award. The commission provided a January 9, 2009 report of Dr. Padmanaban recommending 4% and a September 23, 2009 report of Dr. Landis recommending 2%. Ms. Paynter further asserts that because there was no problem with Dr. Carlson's report, the three reports are entitled to equal evidentiary weight and the report consistent with her position must be adopted.

The Office of Judges, in its Order reversing the Claims Administrator's 4% permanent partial disability award, found Dr. Landis' report to be more persuasive. (February 9, 2010 Office of Judges Order, p. 5). The Office of Judges compared the findings in each of the reports and found that in most areas, the claimant's range of motion had significantly improved by the time of Dr. Landis' evaluation. *Id.* It further noted that awards for permanent partial disability are for permanent impairment, emphasizing the significant improvement since the 2008 exam. The Board of Review reached the same reasoned conclusions in affirming the Office of Judges in its decision of August 10, 2010.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of constitutional or statutory provision, clearly the result of erroneous conclusions of law, or is based upon the Board's material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the denial of the petitioner's request for an 8% permanent partial disability award is affirmed.

Affirmed.

ISSUED: August 2, 2011

CONCURRED IN BY:

Chief Justice Margaret Workman

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Thomas E. McHugh

DISSENTING:

Justice Menis E. Ketchum