

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

June 10, 2014

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

GARY CRABTREE,
Claimant Below, Petitioner

vs.) **No. 13-0027** (BOR Appeal No. 2047421)
(Claim No. 2010100395)

HOMER LAUGHLIN CHINA COMPANY,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Gary Crabtree, by Christopher J. Wallace and Raymond A. Hinerman, his attorneys, appeals the decision of the West Virginia Workers' Compensation Board of Review. Homer Laughlin China Company, by Lucinda L. Fluharty, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated December 18, 2012, in which the Board affirmed a July 6, 2012, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's January 10, 2011, decision granting Mr. Crabtree a 3% permanent partial disability award for his psychiatric disability. The Court has carefully reviewed the records, written arguments, and appendices contained in the briefs, and the case is mature for consideration.

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.

Mr. Crabtree worked as a glass processing supervisor for Homer Laughlin China Company. On July 16, 2009, Mr. Crabtree was feeling unwell due to heat exposure and fell down a flight of stairs injuring his neck, lower back, and head. Mr. Crabtree also began to develop some psychological symptoms in connection to the injury including feelings of uselessness and concentration problems. Edward Miltenberger, M.D., and Susanne Choby, M.D., then performed an independent medical evaluation of Mr. Crabtree and found that he met the criteria for major depressive disorder, single episode, and personality change due to traumatic head injury. Dr.

Miltenberger and Dr. Choby found that Mr. Crabtree was treating his psychological problems with medication, including Zoloft and Ambien, and with periodic psychotherapy sessions. Dr. Miltenberger and Dr. Choby determined that Mr. Crabtree had a global assessment of functioning (GAF) score of 65 which fell within a 0%-5% whole person impairment range under West Virginia Code of State Rules § 85-20 exhibit B (2006). They found that Mr. Crabtree had 5% whole person impairment. However, they determined that 3% impairment was related to his compensable injury and the remainder should be apportioned to non-compensable factors. On January 10, 2011, the claims administrator granted Mr. Crabtree a 3% permanent partial disability award based on Dr. Miltenberger and Dr. Choby's opinion. Anil C. Nalluri, M.D., then evaluated Mr. Crabtree and determined that he had a GAF score of 45, indicating that he had serious psychological symptoms and impairment in social and occupational functioning. Dr. Nalluri found that Mr. Crabtree had 15% whole person impairment related to his personality change and 12% impairment related to his major depressive disorder. He combined these ratings and determined that Mr. Crabtree had 25% whole person impairment for his psychological disability. Stuart S. Burstein, M.D., also evaluated Mr. Crabtree and determined that he had a GAF score of 68. He noted that a GAF score of 70 was in the normal range, indicating that Mr. Crabtree had mild depressive symptoms. Dr. Burstein found that Mr. Crabtree had 3% whole person psychological impairment attributable to his compensable injury. On July 6, 2012, the Office of Judges affirmed the claims administrator's decision. The Board of Review affirmed the Order of the Office of Judges on December 18, 2012, leading Mr. Crabtree to appeal.

The Office of Judges concluded that Mr. Crabtree had 3% whole person psychiatric impairment related to his compensable injury of July 16, 2009, and it affirmed the claims administrator's grant of a 3% permanent partial disability award. The Office of Judges based this determination on the opinions of Dr. Burstein, Dr. Miltenberger, and Dr. Choby. The Office of Judges found that these reports were in substantial agreement and had similar GAF scores. The Office of Judges found that these scores were more consistent with the evidence in the record than the GAF score provided by Dr. Nalluri. The Office of Judges determined that Dr. Nalluri's assessment could not be reconciled with the evidence of Mr. Crabtree's symptoms. The Board of Review adopted the findings of the Office of Judges and affirmed its Order.

We agree with the conclusions of the Board of Review and the findings of the Office of Judges. Mr. Crabtree has not demonstrated that he is entitled to a greater than 3% permanent partial disability award for the psychiatric impairment related to his compensable injury. The opinions of Dr. Burstein, Dr. Miltenberger, and Dr. Choby are consistent with the evidence in the record, including Mr. Crabtree's subjective complaints and his history of treatment. The Office of Judges was within its discretion in relying on their impairment recommendations. Dr. Nalluri's opinion is not supported by the evidence in the record. The record does not reflect the kind of serious psychological symptoms, impediments, or treatment needs which would justify a 25% permanent partial disability award under West Virginia Code of State Rules § 85-20 exhibit B.

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: June 10, 2014

CONCURRED IN BY:

Chief Justice Robin J. Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Menis E. Ketchum
Justice Allen H. Loughry II