

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

June 9, 2014

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

SARAH E. LOBBAN,
Claimant Below, Petitioner

vs.) **No. 13-0045** (BOR Appeal No. 2047452)
(Claim No. 2009079857)

LOBBAN FUNERAL HOME, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Sarah E. Lobban, by, Samuel F. Hanna, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Lobban Funeral Home, Inc., by Alyssa A. Sloan, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated December 14, 2012, in which the Board affirmed a June 26, 2012, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's April 28, 2011, decision which granted Ms. Lobban a 13% permanent partial disability award. 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.

Ms. Lobban, a funeral director and embalmer, injured her lower back while moving a casket on December 26, 2008. Her claim was held compensable for displaced lumbar intervertebral disc and other specified sites of sprains/strains. The claims administrator granted Ms. Lobban a 13% permanent partial disability award on April 28, 2011. That decision was based upon an April 14, 2011, independent medical evaluation by Joseph Grady II, M.D. In the evaluation, Dr. Grady determined that Ms. Lobban had reached maximum medical improvement. Using the American Medical Association's *Guides to the Evaluation of Permanent Impairment*,

(4th Edition, 1993), he assessed 17% lumbar spine impairment. When West Virginia Code of State Rules § 85-20-Table C (2006) was applied, he found that Ms. Lobban fit into Lumbar Category III which has a maximum impairment of 13%. He therefore found that her total whole person impairment was 13%. Ms. Lobban was also evaluated by Jeffrey Summers, D.C. In the October 31, 2011, independent medical evaluation, Dr. Summers found that Ms. Lobban had sustained 19% lumbar impairment using the American Medical Association's *Guides*. Using West Virginia Code of State Rules § 85-20-Table C, he determined that she fit into Lumbar Category II, which he stated indicates impairment between 10% and 13%. He accordingly adjusted his assessment to 13% whole person impairment.

The Office of Judges affirmed the claims administrator's decision in its June 26, 2012, Order. The Office of Judges found that Dr. Grady's independent medical evaluation was in accordance with both the American Medical Association's *Guides* and West Virginia Code of State Rules § 85-20 (2006). The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its Order in its December 14, 2012, decision. This Court agrees with the reasoning and conclusions of the Board of Review.

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 9, 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