

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

LINDA K. BEAVERS, Petitioner

October 28, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 100949 (BOR Appeal No. 2044068)
(Claim No. 940024311)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
AKERS PLASTICS COMPANY, INC., Respondent

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated June 29, 2010, in which the Board affirmed a January 28, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's October 6, 2005, denial of Ms. Beavers's request for a permanent total disability award. The appeal was timely filed by the petitioner and a response was filed by the West Virginia Office of Insurance Commissioner. 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 that based upon a preponderance of the evidence, Ms. Beavers is capable of being vocationally rehabilitated and securing gainful employment. Ms. Beavers disputes this finding and asserts that the Office of Judges ignored relevant medical opinions in the record, misinterpreted relevant opinions in the record, and failed to "note the weight accorded to numerous opinions favorable to the claimant." The

Commissioner asserts that Ms. Beavers failed to show good cause for refusing to participate in vocational rehabilitation.

The Office of Judges noted that Ms. Beavers declined participation in a vocational rehabilitation plan, although vocational consultants Ms. Erin Saniga and Ms. Aimee Pride identified sedentary jobs they believed well-suited to Ms. Beavers's abilities. (January 28, 2010, Office of Judges Order, p.7). The Office of Judges also found that N. B. Hollingsworth's vocational consultation reports were more persuasive than others in the record because they explained the necessary steps for Ms. Beavers to obtain gainful employment. *Id.* p. 8. The Office of Judges found Dr. Bruce Guberman's permanent partial disability impairment ratings of 27% on an orthopedic basis and 15% on a psychiatric basis to be the most reliable ratings because they are the most recent disability ratings available. *Id.* Finally, the Office of Judges found that Ms. Beavers had failed to provide any persuasive evidence demonstrating that she is permanently and totally disabled. The Board of Review reached the same reasoned conclusion in its decision of June 29, 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 a permanent total disability award is affirmed.

Affirmed.

ISSUED: October 28, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Menis E. Ketchum

Justice Thomas E. McHugh