

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

TERRY L. LEWIS, Petitioner

November 17, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 101156 (BOR Appeal No. 2044627)
(Claim No. 2008009777)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
BOB EVANS FARMS, INC., Respondent

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated September 2, 2010, in which the Board affirmed a May 18, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's denial of Ms. Lewis' request for an award of 18% permanent partial disability. The appeal was timely filed by the petitioner and a response was filed by the Bob Evans Farms, Inc. 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, response, 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.

Ms. Lewis asserts Dr. Victor Poletajev examined her and determined she was entitled to an 18% permanent partial disability award for her work-related injuries. Further, Ms. Lewis asserts the Board of Review and Office of Judges improperly discounted the opinions of Dr. Poletajev in favor of the reports of Drs. Saghir R. Mir and Christopher Martin, who opined lower impairment ratings. Bob Evans Farms responds the Board of Review and

Office of Judges properly determined Ms. Lewis was entitled to an award of 8% permanent partial disability.

In its Order affirming the award of 8% permanent partial disability, the Office of Judges found greater evidentiary weight should be given to the reports of Drs. Mir and Martin and less evidentiary weight afforded to Dr. Poletajev's report. (May 18, 2010, Office of Judges Order, p. 4). Further, it found Drs. Mir and Martin agree as to Ms. Lewis' range of motion measurements. *Id.* Since the report of Dr. Mir better supports the position of Ms. Lewis she was properly granted 8% permanent partial disability. The Office of Judges, too, found no basis for granting Ms. Lewis' request for an award of 18% permanent partial disability or for disputing the Claims Administrator's findings. The Board of Review reached the same reasonable conclusion in affirming the Office of Judges in its decision of August 19, 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 Court affirms the Board of Review Order denying an additional award of permanent partial disability.

Affirmed.

ISSUED: November 17, 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