

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

HEATHER A. HARDWAY, Petitioner

December 9, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 101290 (BOR Appeal No. 2044229)
(Claim No. 2003044657)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
AJN HOLDINGS, INC., Respondent

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated September 29, 2010, in which the Board reversed a February 17, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the Claims Administrator's January 9, 2009, Order which granted the claimant a 6% permanent partial 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.

The Board of Review held that the claimant was entitled to the original award of 6% permanent partial disability. Petitioner argues that it was wrong to apportion part of her impairment to the existence of risk factors. Moreover, she argues that carpal tunnel was held compensable, not half compensable. There were three medical evaluations submitted to the record. The first was Dr. Mukkamala who recommended a 6% impairment apportioning

some impairment to non-occupational factors. Dr. Guberman recommended a 12% impairment without apportionment because the employment was the primary factor in the claimant's carpal tunnel syndrome. Finally, Dr. Bachwitt recommended 4% impairment because the claimant only demonstrated mild carpal tunnel syndrome.

In reversing the Office of Judges, the Board of Review found Dr. Mukkamala's evaluation to be the most relevant, credible, material, and reliable. Noting the claimant's history, medical records, and taking into consideration the preponderance of the evidence, the Board of Review found the claimant was fully compensated by a 6% permanent partial disability award. (September 29, 2010, Board of Review Order, p. 3). It also noted that Drs. Mukkamala and Bachwitt found impairment ratings more consistent with the nature of the claimant's condition. *Id.*

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 Board of Review's September 29, 2010, Order is affirmed.

Affirmed.

ISSUED: December 9, 2011

CONCURRED IN BY:

Justice Robin J. Davis
Justice Brent D. Benjamin
Justice Thomas E. McHugh

DISSENTING:

Chief Justice Margaret L. Workman
Justice Menis E. Ketchum