

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

TAMMY A. VANCE,
Claimant Below, Petitioner

FILED
February 4, 2014
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) **No. 11-1197** (BOR Appeal No. 2045886)
(Claim No. 2009075459)

WAL-MART ASSOCIATES, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Tammy A. Vance, by William B. Gerwig III, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Wal-Mart Associates, Inc., by Karen Weingart, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated August 11, 2011, in which the Board affirmed an April 26, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's May 5, 2010, decision granting Ms. Vance an 8% permanent partial disability award for her neck injury. 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. Vance suffered a neck injury while working for Wal-Mart Associates on January 19, 2009. On April 9, 2010, Dr. Mukkamala evaluated Ms. Vance using the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, (4th ed. 1993), and West Virginia Code of State Rules § Table 85-20-E (2006), and found that Ms. Vance has 8% whole person impairment attributable to the compensable injury. Based on this evaluation, the claims administrator granted Ms. Vance an 8% permanent partial disability award on May 5, 2010.

The Office of Judges affirmed the claims administrator's Order, and held that Ms. Vance was entitled to an 8% permanent partial disability award for her neck injury. On appeal, Ms.

Vance argues that West Virginia Code of State Rules §§ 85-20-64.1 (2006) and 64.2 (2006), and Table 85-20-E (2006) are inconsistent with West Virginia Code § 23-4-6(i) (2005) and *Repass v. Workers' Compensation Division*, 212 W.Va. 86, 569 S.E.2d 162 (2002). The Office of Judges noted that the statutory and common law of West Virginia does not support a finding that West Virginia Code of State Rules § 85-20 should not apply to spinal cord injuries. Further, this Court recently stated that “[t]he Board of Manager’s adoption of Rules §§ 85-20-64.1 and 64.2 and Tables 85-20-c, d, and e, is therefore consistent with the intention of the Legislature as expressed in W. Va. Code § 23-4-6(i).” *Gore v. the Insurance Commissioner of West Virginia and Boone County Parks and Recreation Commission*, No. 11-0612 (W.Va. Supreme Court, March 28, 2013)(memorandum decision). The Office of Judges also noted that there is no dispute concerning the medical evidence, as Dr. Mukkamala’s evaluation is the only medical evidence of Ms. Vance’s whole body medical impairment. Thus, Ms. Vance is entitled to an 8% permanent partial disability award for her neck injury. The Board of Review reached the same reasoned conclusions in its decision of August 11, 2011. We agree with the 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: February 4, 2014

CONCURRED IN BY:

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

DISSENTING:

Justice Menis E. Ketchum