

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

January 14, 2014

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

**KAREN A. BLANKENSHIP,
Claimant Below, Petitioner**

vs.) **No. 12-0644** (BOR Appeal No. 2046576)
(Claim No. 2010106700)

**SUMMERSVILLE MEMORIAL HOSPITAL,
Employer Below, Respondent**

MEMORANDUM DECISION

Petitioner Karen A. Blankenship, by Reginald Henry, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Summersville Memorial Hospital, by Toni Minner, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated April 24, 2012, in which the Board affirmed an October 31, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's June 22, 2010, decision granting Ms. Blankenship a 4% 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. Blankenship filed a Report of Injury on September 11, 2009, stating that she felt a pulling sensation in her right shoulder after assisting a patient. On December 11, 2009, the claim was held compensable for right shoulder strain. Ms. Blankenship has undergone two independent medical evaluations to determine the amount of permanent impairment resulting from her compensable injury. On June 7, 2010, Dr. Guberman examined Ms. Blankenship and recommended a 4% permanent partial disability award for her right shoulder injury. On June 22, 2010, the claims administrator granted Ms. Blankenship a 4% permanent partial disability award

based on the report of Dr. Guberman. On February 3, 2011, Dr. Kominsky examined Ms. Blankenship and recommended an 8% permanent partial disability award for her right shoulder injury.

In its Order affirming the June 22, 2010, claims administrator's decision, the Office of Judges held that Ms. Blankenship has 4% whole person impairment as a result of her right shoulder injury. Ms. Blankenship disputes this finding and asserts, per the opinion of Dr. Kominsky, that she has a total of 8% whole person impairment as a result of her right shoulder injury.

Although Dr. Kominsky examined Ms. Blankenship approximately eight months after Dr. Guberman's evaluation, Dr. Kominsky obtained decreased range of motion measurements in comparison to those obtained by Dr. Guberman. However, despite having access to Dr. Guberman's conclusions, Dr. Kominsky failed to account for the apparent decline in Ms. Blankenship's range of motion in the right shoulder. The Office of Judges found that Dr. Guberman's report is more persuasive than the report of Dr. Kominsky. The Board of Review agreed with the conclusion of the Office of Judges in its decision of April 24, 2012. We agree with the conclusion 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: January 14, 2014

CONCURRED IN BY:

Chief Justice Robin J. Davis
Justice Margaret L. Workman
Justice Menis E. Ketchum
Justice Allen H. Loughry II

Justice Brent D. Benjamin, not participating