

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

April 12, 2016

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

**ESTELLE SHAFFER,
Claimant Below, Petitioner**

vs.) **No. 15-0484** (BOR Appeal No. 2049939)
(Claim No. 2013018530)

**BROOKE COUNTY BOARD OF EDUCATION,
Employer Below, Respondent**

MEMORANDUM DECISION

Petitioner Estelle Shaffer, by Edwin H. Pancake, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Brooke County Board of Education, by Matthew Williams, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated April 24, 2015, in which the Board affirmed an October 7, 2014, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's July 30, 2013, decision denying Ms. Shaffer's request for further physical therapy. In its October 7, 2014, Order, the Office of Judges reversed the claims administrator's separate July 30, 2013, decision granting Ms. Shaffer a 12% permanent partial disability award and ordered that Ms. Shaffer be granted an additional 8% permanent partial disability award for a total of a 20% permanent partial disability award. It also reversed the claims administrator's other separate July 30, 2013, decision closing the claim for medical treatment and ordered that the claim remain open for medical treatment benefits.¹ 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.

¹ Ms. Shaffer is appealing the Board of Review's Order insofar as it denied her request for further physical therapy, and she is not appealing the other issues.

Ms. Shaffer was working for the Brooke County Board of Education when she was injured on January 10, 2013, due to slipping and falling on an icy parking lot in the course of her employment. The claim was held compensable.² Ms. Shaffer received physical therapy for her compensable injury from May 20, 2013, to July 25, 2013. Ms. Shaffer is currently requesting further physical therapy. She underwent three independent medical evaluations. First, Bill Hennessey, M.D., concluded that no further treatment for the compensable injury is recommended. Next, Bruce Guberman, M.D., opined that no further medical treatment and/or diagnostic testing will likely improve her impairment in regard to this injury. Finally, ChuanFang Jin, M.D., opined that Ms. Shaffer had degenerative lumbar disc disease and may need symptomatic management of her symptoms. She found that no surgery or specific medical treatment is indicated for the injury in this claim.

The Office of Judges affirmed the claims administrator's July 30, 2013, decision denying Ms. Shaffer's July 15, 2013, authorization request for physical therapy at Mountain River Physical Therapy. The Office of Judges reversed the claims administrator's separate July 30, 2013, decision granting Ms. Shaffer a 12% permanent partial disability award and ordered that Ms. Shaffer be granted an additional 8% permanent partial disability award for a total of a 20% permanent partial disability award. The Office of Judges also reversed the claims administrator's other separate July 30, 2013, decision closing the claim for medical treatment and ordered that the claim remain open for medical treatment benefits. The Board of Review affirmed the Office of Judges' Order. On appeal, Ms. Shaffer disagrees and asserts that she has continued to show progress with physical therapy and has not yet reached maximum medical improvement. Brooke County Board of Education maintains that the evidence fully supports the finding that Ms. Shaffer has reached maximum medical improvement and that no further treatment, including physical therapy, was reasonable or necessary in relation to the compensable injury.

The Office of Judges concluded that Ms. Shaffer has not proven by a preponderance of the evidence that further physical therapy is reasonably required medical treatment for her injury received in the course of or as a result of her employment. Ms. Shaffer claims that the physical therapy was improving her compensable injury. However, three independent medical examinations were performed, and all three physicians, including Ms. Shaffer's own independent medical evaluator, Dr. Guberman, found that no further specific treatment was needed for the compensable injury. The Board of Review agreed with the Office of Judges' findings and conclusions. This Court agrees with the conclusions of the Board of Review's Order. Dr. Guberman, Dr. Hennessey, and Dr. Jin all three found that Ms. Shaffer does not need any further specific treatment for the compensable injury at the time of their examinations. Therefore, Ms. Shaffer has failed to prove that further physical therapy is reasonably required medical treatment for her compensable injury.

² The record does not contain the claims administrator's decision that determined which conditions are compensable.

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: April 12, 2016

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Margaret L. Workman

Justice Allen H. Loughry II

DISSENTING:

Justice Brent D. Benjamin