

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

**KEVIN S. GOFF,
Claimant Below, Petitioner**

FILED

July 20, 2018
EDYTHE NASH GAISER, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) **No. 18-0320** (BOR Appeal No. 2052195)
(Claim No. 2011027511)

**WV DIVISION OF NATURAL RESOURCES,
Employer Below, Respondent**

MEMORANDUM DECISION

Petitioner Kevin S. Goff, by Jonathan C. Bowman, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. The West Virginia Division of Natural Resources did not file a response.

The issue on appeal is the amount of permanent partial disability benefits resulting from the compensable injury. In an Order dated March 18, 2016, the claims administrator granted Mr. Goff a 3% permanent partial disability award for psychiatric impairment. On August 23, 2017, the Workers' Compensation Office of Judges reversed the decision of the claims administrator and granted Mr. Goff an additional 2% permanent partial disability award representing a total 5% psychiatric permanent partial disability award. The Board of Review issued an Order dated March 13, 2018, which affirmed the decision of the Office of Judges. 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.

Mr. Goff worked as a police officer for the West Virginia Division of Natural Resources. On February 6, 2011, Mr. Goff was struck in the right eye by a briar and developed an infection that caused him to have his right eye removed. The claim was held compensable for the following conditions: orbital cellulitis, acute iridocyclitis not otherwise specified, and

superficially injured cornea. During his course of treatment, the ongoing work-related stress caused Mr. Goff to suffer anxiety, frustration, and manifestations of irritability. He noted decreased interest and motivation as a result of his injury. Psychologist M. Aileen Mansuetto, M.A., diagnosed Mr. Goff with post-traumatic stress disorder "PTSD" and an adjustment disorder with mixed anxiety and depressed mood on April 26, 2012. Mr. Goff treated with Patricia M. Bailey, Ph.D., a clinical psychologist, on multiple occasions for mental health counseling and treatment for depression. Mr. Goff reported throughout his treatment symptoms of depression and PTSD. On October 3, 2012, Dr. Bailey opined, based upon a reasonable degree of psychological certainty, that Mr. Goff's psychological conditions of PTSD and comorbid depression are a direct result of his injury which occurred on February 6, 2011. A Diagnosis Update form dated December 27, 2012, completed by Dr. Bailey, noted that the diagnoses of PTSD and major depressive disorder should be added to the claim per her psychological evaluation on October 3, 2012.

On February 22, 2016, Mr. Goff was evaluated by Richard C. Geary, III, M.D., along with Cheryl Hill, M.S., Ph.D., at the Department of Behavioral Medicine and Psychiatry at West Virginia University. Dr. Geary diagnosed Mr. Goff with PTSD and major depressive disorder, single episode, moderate, without psychotic features. Dr. Geary further opined that the work-related injury was the sole contributor to Mr. Goff's PTSD. Regarding the issue of depressive disorder, Dr. Geary opined that the work-related injury was a major contributor with non-work-related factors accounting for 10% of the diagnosis. Based upon West Virginia Code of State Rules § 85-20 and a Global Assessment of Functioning "GAF" of 65, it was determined that Mr. Goff had 3% psychiatric impairment due to his compensable injury. Dr. Geary believed that apportionment was necessary in this claim.

By Order dated March 18, 2016, the claims administrator granted Mr. Goff a 3% permanent partial disability award for psychiatric impairment. The claims administrator's decision was based upon the opinion of Dr. Geary. Mr. Goff protested the claims administrator's 3% permanent partial disability award.

Mr. Goff presented to Timothy Thistlewaite, M.D., on November 14, 2016, for a psychiatric evaluation. Dr. Thistlewaite, a psychiatrist, diagnosed Mr. Goff with PTSD and major depressive disorder, single, moderate. During the evaluation, Mr. Goff reported being depressed all the time, which leaves him with decreased motivation and loss of pleasure from activities. Mr. Goff remained resistant to pharmacotherapy and expressed his dislike of psychiatric medications. Dr. Thistlewaite opined that Mr. Goff is unlikely to receive any further improvement that would render him capable of being able to return to any further employment. Because it was determined that Mr. Goff reached his maximum degree of medical improvement, Dr. Thistlewaite recommended 14% psychiatric impairment due to ongoing chronic symptoms of depression and anxiety related to the PTSD diagnosis. Dr. Thistlewaite used the West Virginia Workers' Compensation Impairment Guidelines for Psychiatric Impairment in determining Mr. Goff's impairment rating. The report failed to record a GAF score. Dr. Thistlewaite's report was accompanied by a psychological evaluation of Rosemary L. Smith, Ph.D., dated November 7, 2016.

The employer submitted an independent medical evaluation report of Robert Wettstein, M.D., dated May 12, 2017. During the evaluation, Mr. Goff complained of persistent depression and symptoms of anxiety. Dr. Wettstein diagnosed Mr. Goff with major depressive disorder and PTSD. Mr. Goff's GAF score was recorded as being 65 due to the presence of mild symptoms and functional impairment due to psychiatric conditions. Based upon the West Virginia Workers' Compensation Impairment Guidelines for Psychiatric Impairment, as well as a GAF score of 65, Dr. Wettstein opined that Mr. Goff has 5% impairment.

In a Final Order dated August 23, 2017, the Office of Judges concluded that a preponderance of the evidence establishes that Mr. Goff has 5% psychiatric impairment as a result of the injury he received in the course of and resulting from his employment with the West Virginia Division of Natural Resources. The Office of Judges considered the three psychiatric reports which offered impairment ratings. It was noted that the claims administrator granted Mr. Goff a 3% permanent partial disability award based upon Dr. Geary's report dated February 22, 2016. The Office of Judges found Dr. Geary's report unreliable because the evidence indicates that apportionment should not occur in this case.

Mr. Goff was evaluated by two other physicians regarding his psychiatric impairment. In his report dated November 14, 2016, Dr. Thistlewaite opined that Mr. Goff has 14% psychiatric impairment based upon a moderate level of symptomatology due to significant and continuing anxiety and depression as a result of the compensable injury. In determining Mr. Goff's rating, Dr. Thistlewaite's report failed to list a GAF score. Although Mr. Goff argues that a psychiatric examination does not require the reporting of a GAF score, the Office of Judges determined that the Guidelines for Psychiatric Independent Medical Examination Report Outline requires a psychiatric impairment rating and per Exhibit B of West Virginia Code of State Rules § 85-20, the examiner must justify his rating based on information rows 1-5, of which row 1 is the GAF score. Therefore, the Office of Judges concluded that a GAF score is required to be in a psychiatric impairment rating. Because Dr. Thistlewaite failed to report and/or consider a GAF score, the Office of Judges found his report to be unreliable.

The remaining psychiatric impairment report is that of Dr. Wettstein dated May 12, 2017, in which Mr. Goff was diagnosed with PTSD and major depressive disorder. Dr. Wettstein recorded a GAF score of 65 due to the presence of mild symptoms and functional impairment due to psychiatric disorders. Dr. Wettstein opined that Mr. Goff has 5% psychiatric impairment. In arriving at his assessment, Dr. Wettstein utilized the West Virginia Workers' Compensation Impairment Guidelines for Psychiatric Impairment. The Office of Judges found Dr. Wettstein's assessment to be the most reliable report of record and concluded that Mr. Goff has 5% psychiatric impairment as a result of his compensable injury. The Office of Judges reversed the March 18, 2016, Order of the claims administrator and granted Mr. Goff an additional 2% permanent partial disability award for a total psychiatric award of 5% based upon the report of Dr. Wettstein.

In its Order dated March 13, 2018, the Board of Review adopted the findings of fact of the Office of Judges, which related to the issue on appeal, and the conclusion of law that a preponderance of the evidence establishes that Mr. Goff has 5% psychiatric impairment as a

result of his compensable injury. The Board of Review did not adopt the discussion by the Office of Judges related to the requirement of a GAF score. However, the Board of Review concluded that the November 14, 2016, report of Dr. Thistlewaite does not provide the findings and conclusions necessary to support his impairment rating.

The Board of Review affirmed the decision of the Office of Judges to grant Mr. Goff an additional 2% permanent partial disability award for a total of 5% permanent partial disability. This Court agrees with the Board of Review. Dr. Wettstein's opinion that Mr. Goff has 5% psychiatric impairment as a result of his compensable injury is the most reliable assessment of Mr. Goff's total impairment.

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: July 20, 2018

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Robin J. Davis

Justice Elizabeth D. Walker

DISSENTING:

Justice Menis E. Ketchum

Justice Loughry, Allen H., II suspended and therefore not participating