

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

LAURA E. MARTIN, Petitioner

May 29, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 100653 (BOR Appeal No. 2043845)
(Claim No. 2008019202)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
MR. VEND, INC., Respondent

MEMORANDUM DECISION

Petitioner Laura E. Martin, by Robert Stultz, her attorney, appeals the West Virginia Workers' Compensation Board of Review's Order denying an additional permanent partial disability award. Mr. Vend, Inc., by James Heslep, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated April 21, 2010, in which the Board affirmed a November 6, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the claims administrator's June 23, 2008, Order, and granted Ms. Martin a 5% permanent partial disability award. 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.

In this case, Ms. Martin was working for Mr. Vend, Inc. when she injured her back. The claim was subsequently held compensable for a lumbar sprain/strain. On June 23, 2008, the claims administrator granted Ms. Martin a 0% permanent partial disability award based on an evaluation by Dr. Guberman.

The Office of Judges reversed the claims administrator and held that Ms. Martin was entitled to a 5% permanent partial disability award for the injury to her lower back. Ms. Martin disagrees and asserts that according to the report of Dr. Snead, she is entitled to an additional 3% for a total of an 8% permanent partial disability award for the injury.

The Office of Judges relied upon the report of Dr. Steinman in reversing the claims administrator's Order and granting a 5% permanent partial disability award. The Office of Judges found that Dr. Steinman's evaluation was the most reliable evidence of record. Additionally, the Office of Judges noted that Dr. Snead's report was based upon an invalid range of motion measurement. The Board of Review reached the same reasoned conclusion in its decision of April 21, 2010.

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 Board of Review's April 21, 2010, Order is affirmed.

Affirmed.

ISSUED: May 29, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Thomas E. McHugh

DISSENTING:

Justice Margaret L. Workman