

**STATE OF WEST VIRGINIA**

**SUPREME COURT OF APPEALS**

**FILED**

**RENNIE D. PAULEY, Petitioner**

**February 22, 2012**  
**RORY L. PERRY II, CLERK**  
**SUPREME COURT OF APPEALS**  
**OF WEST VIRGINIA**

**vs.) No. 101375 (BOR Appeal No. 2044396)**  
**(Claim No. 930015760)**

**WEST VIRGINIA OFFICE OF**  
**INSURANCE COMMISSIONER and**  
**CHARLESTON AREA MEDICAL CENTER, INC.,**  
**Respondent**

**MEMORANDUM DECISION**

Petitioner Rennie D. Pauley, by John Blair, her attorney, appeals the West Virginia Workers' Compensation Board of Review's Order denying permanent total disability. Charleston Area Medical Center, Inc., by H. Dill Battle, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated October 12, 2010, in which the Board affirmed an April 2, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the Claims Administrator's denial of a permanent total 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.

The Board of Review affirmed the holding that the claimant was not entitled to a permanent total disability award as she was able to return to substantial gainful employment.

Ms. Pauley disagrees with this finding and asserts that part-time volunteering does not constitute substantial gainful employment. Moreover, she argues that there was no credible or specifically identifiable reasoning why opposing evidence was found to be more reliable.

In its Order affirming the Claims Administrator's denial of a permanent total disability award, the Office of Judges held that the record presented did not establish that Ms. Pauley was permanently and totally disabled from her relatively minor compensable injuries. (April 2, 2010, Office of Judges Order, p. 9). In consideration of the evidence, the Office of Judges noted that in prior evaluations, petitioner did not demonstrate full effort but was still found capable of full-time sedentary work. *Id.* at p.8. In the most recent evaluation, the Office of Judges also noted that evidence of her volunteer work demonstrated her cognitive abilities to learn new skills. *Id.* The Board of Review reached the same reasoned conclusions in affirming the Office of Judges in its decision of October 12, 2010.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of constitutional or statutory provision, clearly the result of erroneous conclusions of law, or based upon the Board's material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the Board of Review Order is affirmed.

Affirmed.

**ISSUED: : February 22, 2012**

**CONCURRED IN BY:**

Justice Robin J. Davis  
Justice Brent D. Benjamin  
Justice Margaret L. Workman  
Justice Thomas E. McHugh

**DISSENTING:**

Chief Justice Menis E. Ketchum