

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

February 17, 2012

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

MARY J. WALTER, Petitioner

**vs.) No. 101395 (BOR Appeal No. 2044402)
(Claim No. 2006018323)**

**WEST VIRGINIA OFFICE OF INSURANCE
COMMISSIONER, Respondent**

MEMORANDUM DECISION

Petitioner Mary J. Walter, by Edwin Pancake, her attorney, appeals the decision of the Board of Review. Ms. Walter's employer, the West Virginia Office of Insurance Commissioner, by Timothy Huffman, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated October 5, 2010, in which the Board affirmed a March 25, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the claims administrator's March 20, 2008, decision to grant Ms. Walter a 6% permanent partial disability award, and instead granted Ms. Walter a 4% 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 its Order, the Office of Judges held that Ms. Walter is entitled to a 4% permanent partial disability award. Ms. Walter disputes this finding and asserts that, per the opinion of

Dr. Walker, she is entitled to a 10% permanent partial disability award.

The Office of Judges noted that Dr. Walker found that Ms. Walter had a 4% whole person impairment based on her range of motion measurements, but that Dr. Walker instead recommended a 10% permanent partial disability award based upon his utilization of measurements appropriate for patients who have suffered a loss of range of motion, as well as his belief that a 10% permanent partial disability award is consistent with the nature of Ms. Walter's injury. The Office of Judges then found that, according to Dr. Hoh and Dr. Mukkamala, Dr. Walker's range of motion findings are inconsistent with a 10% permanent partial disability award. The Office of Judges found that Dr. Hoh's permanent partial disability award recommendation of 6% is incorrect because he made an error when converting Ms. Walter's total lower extremity impairment to a percentage of whole person impairment. As noted by the Office of Judges, Dr. Mukkamala's 4% permanent partial disability award recommendation was the only recommendation that correctly accounted for Dr. Walker's range of motion findings. The Board of Review reached the same reasoned conclusion in its decision of October 5, 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 is based upon the Board's material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the denial of the Board of Review is affirmed.

Affirmed.

ISSUED: February 17, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh