

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

SHEILA Y. HARRISON, Petitioner

March 26, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 101489 (BOR Appeal No. 2044398)
(Claim No. 2004027905)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
RALEIGH GENERAL HOSPITAL, Respondent

MEMORANDUM DECISION

Petitioner Sheila Y. Harrison, by Cathy L. Grenier, her attorney, appeals the decision of the Board of Review. The West Virginia Office of Insurance Commissioner, by Jon H. Snyder, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated November 9, 2010, in which the Board affirmed an April 5, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's November 5, 2008, decision granting Ms. Harrison no additional permanent partial disability award for her December 13, 2003, injury because she is fully compensated through a prior 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. Harrison is not entitled to an additional permanent partial disability award for her December 13, 2003, injuries and that she is fully compensated through a prior 7% permanent partial disability award, based on the report of Dr. Landis. Ms. Harrison disputes this finding and asserts that, based upon the opinions of Dr. Poletajev and Dr. Mukkamala, she is entitled to an additional permanent partial disability award.

The Office of Judges relied on W. Va. Code § 23-4-9b (2003), which provides that pre-injury impairments are not considered when determining the amount of compensation. The Office of Judges found that the report of Dr. Landis is the only reliable report of record. The Office of Judges found that the report of Dr. Poletajev is unreliable primarily because he failed to consider and apportion for Ms. Harrison's known preexisting degenerative changes to her lumbar spine, her congenital spondylolithesis, and her lumbar fusion that was performed to treat a non-compensable condition. The Office of Judges then found that although Dr. Mukkamala acknowledged Ms. Harrison's preexisting and non-compensable conditions, he apportioned at the wrong time while performing his impairment calculation, resulting in an erroneous permanent partial disability recommendation. The Board of Review reached the same reasoned conclusion in its decision of November 9, 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 the Board's material misstatement or mischaracterization of the evidentiary record. Therefore, the decision of the Board of Review is affirmed.

Affirmed.

ISSUED: March 26, 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