

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

February 5, 2013

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

**PHYLLIS HARRISON,
Claimant Below, Petitioner**

vs.) No. 11-0735 (BOR Appeal No. 2045369)
(Claim No. 2008031332)

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

and

**PHYLLIS HARRISON d/b/a PHYLLIS'S HAIR BOUTIQUE,
Employer Below, Respondent**

MEMORANDUM DECISION

Petitioner Phyllis Harrison, by William Gerwig III, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Phyllis Harrison d/b/a Phyllis's Hair Boutique, by Bradley Crouser, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated April 26, 2011, in which the Board affirmed a November 19, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's October 5, 2009, decision granting Ms. Harrison a 14% permanent partial disability award. 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.

Ms. Harrison was working as a self-employed hairstylist when she suffered a work-related injury to both shoulders on October 25, 2007. On July 7, 2009, Dr. Guberman performed an independent medical evaluation and recommended a 16% permanent partial disability award for the bilateral shoulder injury. Both Dr. Mukkamala and Dr. Mir recommended a 14% permanent partial disability award on August 4, 2009, and April 12, 2010, respectively.

In its Order affirming the October 5, 2009, claims administrator's decision, the Office of Judges held that Ms. Harrison is entitled to no more than a 14% permanent partial disability award for her compensable injuries. Ms. Harrison disputes this finding and asserts, per the opinion of Dr. Guberman, that she is entitled to an additional 2% permanent partial disability award, for a total permanent partial disability award of 16%.

In its Order, the Office of Judges noted that both Dr. Mukkamala's and Dr. Mir's 14% permanent partial disability award recommendations were made after Dr. Guberman's 16% recommendation. The Office of Judges further noted that Ms. Harrison had been receiving physical therapy at the time of Dr. Mukkamala's evaluation. The Office of Judges then found that based upon the record as a whole, Dr. Mukkamala's and Dr. Mir's recommendations of a 14% permanent partial disability award are the most reliable estimates of Ms. Harrison's whole person impairment resulting from the compensable injuries. The Board of Review reached the same reasoned conclusion in its decision of April 26, 2011. We agree with the reasoning and conclusions of the Board of Review.

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: February 5, 2013

CONCURRED IN BY:

Chief Justice Brent D. Benjamin

Justice Robin J. Davis

Justice Margaret L. Workman

Justice Menis E. Ketchum

Justice Allen H. Loughry II