

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

February 8, 2013

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

BETTY J. HAMPTON,
Claimant Below, Petitioner

vs.) No. 11-0826 (BOR Appeal No. 2045216)
(Claim No. 2006024080)

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

and

WILLIAMSON MEMORIAL HOSPITAL, LLC,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Betty J. Hampton, by John Blair, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. The West Virginia Office of Insurance Commissioner, by Jack Rife, 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 an October 22, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's June 2, 2009, Order granting Ms. Hampton a 4% permanent partial disability award for bilateral carpal tunnel syndrome. 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. Hampton was employed by Williamson Memorial Hospital as a cook. During her employment she developed bilateral carpal tunnel syndrome. The claims administrator originally denied her application for workers' compensation benefits. The Office of Judges held the claim compensable for bilateral carpal tunnel syndrome on September 5, 2008. She was treated conservatively. On June 2, 2009, based on the report by Dr. Grady, the claims administrator granted Ms. Hampton a 4% permanent partial disability award.

The Office of Judges concluded that Ms. Hampton was entitled to only a 4% permanent partial disability award for bilateral carpal tunnel syndrome. On appeal, Ms. Hampton argues that because there is no specifically identifiable reasoning why Dr. Poletajev's report is not reliable, she is entitled to a 12% permanent partial disability award. The West Virginia Office of Insurance Commissioner maintains that the evidence establishes that the 4% permanent partial disability award fully compensates Ms. Hampton for her mild carpal tunnel syndrome. Dr. Grady found that Ms. Hampton suffered from mild carpal tunnel syndrome, that she received conservative treatment, that she did not want more aggressive treatment, and that she discontinued her employment due to another injury. He concluded that she suffered from 4% whole person impairment. Dr. Poletajev found significantly worse impairment, recommending that Ms. Hampton suffered from 12% whole person impairment.

In affirming the 4% permanent partial disability award, the Office of Judges noted that the evidence demonstrated that Ms. Hampton's condition was mild with tolerable symptoms. It also noted that she received no significant treatment and declined any surgeries. Ms. Hampton continued her employment until a back injury. The Office of Judges also noted that Dr. Poletajev was a chiropractic physician. Thus, the Office of Judges concluded that the evidence did not support Dr. Poletajev's significantly worse impairment recommendation. The Board of Review reached the same reasoned conclusions in its Order 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 8, 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