

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

March 27, 2013

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

OPAL L. COTTRILL,
Claimant Below, Petitioner

vs.) No. 11-0971 (BOR Appeal No. 2045354)
(Claim No. 2006037696)

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

and

UNITED HOSPITAL CENTER, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Opal L. Cottrill, by Robert Stultz, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. United Hospital Center, Inc., by Gary Nickerson and James Heslep, its attorneys, filed a timely response.

This appeal arises from the Board of Review's Final Order dated June 8, 2011, in which the Board affirmed a November 15, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's September 3, 2009, decision granting Ms. Cottrill a 5% permanent partial disability award for her lower back injury. 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. Cottrill was working for United Hospital Center, Inc. when she suffered a lumbar sprain/strain, and the claim was held compensable for such. Ms. Cottrill also suffers from a preexisting degenerative disease in her back. During December of 2008 she underwent surgery that was found unrelated to the compensable injury. On September 3, 2009, the claims administrator granted Ms. Cottrill a 5% permanent partial disability award based on the report by Dr. Charles Werntz III.

The Office of Judges affirmed the claims administrator's Order, and held that Ms. Cottrill was entitled to only a 5% permanent partial disability award attributable to the compensable injury. Ms. Cottrill disputes this finding and asserts that she is entitled to a 20% permanent partial disability award as found by Dr. Snead. United Hospital Center maintains that the 5% permanent partial disability award is correct. Dr. Charles Werntz III found that Ms. Cottrill suffered from 5% impairment due to the compensable injury, attributing her other impairment to the preexisting degenerative disease. Dr. Snead found that Ms. Cottrill had 20% impairment. Dr. Jin found that Ms. Cottrill had no impairment attributable to the compensable injury.

In affirming the claims administrator's Order, the Office of Judges found that Dr. Snead did not properly evaluate Ms. Cottrill's impairment related to the compensable injury. It noted that Dr. Snead stated that if the surgery was deemed related to the work injury, then she suffered from 20% impairment. The Office of Judges concluded that the surgery was not related to the compensable injury, and that Dr. Charles Werntz III was correct in finding that Ms. Cottrill was entitled to a 5% permanent partial disability award. The Board of Review reached the same reasoned conclusions in its decision of June 8, 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: March 27, 2013

CONCURRED IN BY:

Chief Justice Brent D. Benjamin
Justice Robin J. Davis
Justice Margaret L. Workman
Justice Allen H. Loughry II

DISSENTING:

Justice Menis E. Ketchum