

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

FILED
November 7, 2013
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

DOROTHY J. SHEETS,
Claimant Below, Petitioner

vs.) **No. 12-0085** (BOR Appeal No. 2046176)
(Claim No. 2001034755)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER
Commissioner Below, Respondent

and

SMR TECHNOLOGIES, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Dorothy J. Sheets, by Gregory W. Sproles, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. The West Virginia Office of Insurance Commissioner, by Anna L. Faulkner, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated December 23, 2011, in which the Board affirmed a July 22, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's October 7, 2009, decision which denied Ms. Sheets's application to reopen her claim for permanent total disability benefits. 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. Sheets worked for SMR Technologies. On January 16, 2001, Ms. Sheets was cleaning a stockroom at work when a wooden skid fell on her left foot. She initially received conservative treatment and on June 24, 2002, the claims administrator granted her a 0% permanent partial disability award. At that time, the claims administrator also denied Ms. Sheets's application for permanent total disability benefits. But Ms. Sheets continued to experience symptoms from her injury and she developed reflex sympathetic dystrophy, severe low back pain, and major depression which required more aggressive forms of treatment. The Office of Judges then reversed the claims administrator's decision on July 25, 2005, and granted Ms. Sheets a 29% permanent partial disability award. Ms. Sheets's permanent partial disability was finally increased, according to the instructions of this Court, to a 40% award for her physical disability and a 10% award for her psychiatric disability. On January 13, 2009, Ms. Sheets submitted an application to have her claim reopened for permanent total disability benefits. The claims administrator denied her application on October 7, 2009, because the application was filed more than five years after the initial permanent partial disability award. The Office of Judges affirmed the claims administrator's decision on July 22, 2011. The Board of Review affirmed the Order of the Office of Judges on December 23, 2011, leading Ms. Sheets to appeal.

The Office of Judges concluded that Ms. Sheets did not demonstrate that her January 13, 2009, application for reopening complied with the time limitations of West Virginia Code § 23-4-16 (2005). The Office of Judges found that Ms. Sheets had suffered significant disabilities due to her compensable injury. But the Office of Judges found that her application for reopening of her claim for permanent total disability benefits was not timely filed. The Office of Judges determined that the date of the initial award of permanent partial disability benefits occurred on June 24, 2002. Based on this determination, it found that Ms. Sheets's application for reopening on January 13, 2009, was not filed within five years of the initial award. The Board of Review adopted the findings of the Office of Judges and affirmed its Order.

We agree with the conclusion of the Board of Review. West Virginia Code § 23-4-16(a)(2) requires that a request for reopening must be made within five years of the date of the initial award. Although the evidence in the case demonstrates that Ms. Sheets has been significantly disabled as a result of her compensable injury, she did not file her application for reopening for consideration of permanent total disability benefits in a timely manner. Her application was properly refused.

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: November 7, 2013

CONCURRED IN BY:

Chief Justice Brent D. Benjamin

Justice Robin J. Davis

Justice Allen H. Loughry II

DISSENTING:

Justice Margaret L. Workman

Justice Menis E. Ketchum