

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

FILED
January 14, 2014
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

TERESA FINLEY,
Claimant Below, Petitioner

vs.) No. 12-0519 (BOR Appeal No. 2046472)
(Claim No. 2008046483)

WAYNE COUNTY BOARD OF EDUCATION,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Teresa Finley, by John C. Blair, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. The Wayne County Board of Education, by Steven K. Wellman, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated March 26, 2012, in which the Board affirmed a September 20, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the claims administrator's July 2, 2009, decision granting Ms. Finley a 2% permanent partial disability award. The Office of Judges granted Ms. Finley a 4% 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. Finley worked as a teacher's aide for the Wayne County Board of Education. On June 2, 2008, Ms. Finley injured her left knee while going down a staircase. The claims administrator held her claim compensable for a sprain of the left knee and leg. Following this decision, an MRI scan was taken of Ms. Finley's knee which revealed a tiny amount of fluid within the bursa of her knee consistent with a Baker's cyst. Dr. Guberman then evaluated Ms. Finley and found that she had 4% whole person impairment from her left knee based on the

American Medical Association's *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993). But Dr. Guberman apportioned 2% of Ms. Finley's impairment to her Baker's cyst which he believed was related to a prior injury or a pre-existing condition. The claims administrator granted Ms. Finley a 2% permanent partial disability award based on Dr. Guberman's recommendation. Dr. Poletajev then evaluated Ms. Finley under the American Medical Association's *Guides* and found 8% impairment for flexion and flexion contracture in the left knee. Dr. Poletajev believed that it was inappropriate to apportion any impairment in this case for a pre-existing injury because Ms. Finley had not acknowledged that she had any prior injuries to her knee. On September 20, 2011, the Office of Judges reversed the claims administrator's decision and granted Ms. Finley a 4% permanent partial disability award. The Board of Review then affirmed the Order of the Office of Judges on March 26, 2012, leading Ms. Finley to appeal.

The Office of Judges concluded that Ms. Finley had incurred a 4% permanent partial disability as a result of her compensable June 2, 2008, injury. In making this determination, the Office of Judges relied on the whole person impairment rating of Dr. Guberman but rejected his apportionment of 2% of the 4% whole person impairment rating to a pre-existing injury. The Office of Judges found that the impairment rating of Dr. Poletajev was flawed because he arrived at his 8% whole person impairment recommendation by combining his rating for flexion and flexion contracture impairment. The Office of Judges found his impairment rating to be inappropriately duplicative. But the Office of Judges found that Dr. Guberman's apportionment of 2% impairment to a pre-existing condition was inappropriate. The Office of Judges relied on the report of Dr. Poletajev, who found that there was no credible evidence that Ms. Finley had incurred any problem or received any treatment relating to her Baker's cyst prior to the compensable injury. The Board of Review adopted the findings of the Office of Judges and affirmed its Order.

We agree with the conclusions of the Board of Review and the findings of the Office of Judges. The evidence in the record demonstrates that Ms. Finley has suffered 4% whole person impairment in relation to her compensable knee and leg sprain. She is entitled to a 4% permanent partial disability award. Dr. Guberman provided a thorough evaluation of Ms. Finley's impairment based on the American Medical Association's *Guides* and his evaluation is supported by the record as a whole. The Office of Judges was within its discretion in relying on Dr. Guberman's impairment assessment. But Dr. Guberman's apportionment of 2% impairment was inappropriate in light of the fact that there is no evidence in the record that Ms. Finley had suffered a prior injury or had any pre-existing conditions. The Office of Judges also had specific and justifiable reasons for not relying on Dr. Poletajev's impairment rating.

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: January 14, 2014

CONCURRED IN BY:

Chief Justice Robin J. Davis

Justice Margaret L. Workman

Justice Menis E. Ketchum

Justice Allen H. Loughry II

Justice Brent D. Benjamin, not participating