

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

**JANET L. RICHARDSON,
Claimant Below, Petitioner**

FILED
June 27, 2014
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 13-0796 (BOR Appeal No. 2048010)
(Claim No. 2012008470)

**SPEEDWAY, LLC,
Employer Below, Respondent**

MEMORANDUM DECISION

Petitioner Janet L. Richardson, by M. Jane Glauser, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Speedway, LLC, by Howard G. Salisbury Jr., its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated July 3, 2013, in which the Board affirmed a December 10, 2012, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's January 25, 2012, decision granting Ms. Richardson a 5% 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. Richardson worked as a sales clerk for Speedway, LLC. On August 29, 2011, she was assaulted while at work. During the assault, her attacker shoved her repeatedly against a metal sink, which caused a significant bruise on her back. X-rays were taken of Ms. Richardson's back at Wheeling Hospital which showed multi-level disc narrowing. The x-ray did not identify any acute compression. Ms. Richardson then came under the care of Heather Gibbons, FNP-BC, who found that she had full range of motion and released her to return to regular work duty without restrictions. The claims administrator held Ms. Richardson's claim

compensable for a back contusion and determined that she was only eligible for necessary medical treatment and expenses. An MRI was then taken of Ms. Richardson's lumbar spine which revealed multi-level degenerative disc disease and herniations. Sushil M. Sethi, M.D., then evaluated Ms. Richardson and found that she had reached her maximum degree of medical impairment with respect to her back contusion. Dr. Sethi found that Ms. Richardson had multi-level degenerative disc disease which was age-related and not compensable. He determined that Ms. Richardson had 5% whole person impairment related to her compensable injury under the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) and Lumbar Category II of West Virginia Code § 85-20-C (2006). On December 10, 2012, the Office of Judges affirmed the claims administrator's decision. The Board of Review then affirmed the Office of Judges' Order on July 3, 2013, leading Ms. Richardson to appeal.

The Office of Judges concluded that Ms. Richardson had 5% whole person impairment of the lumbar spine attributable to the August 29, 2011, injury. The Office of Judges found that Ms. Richardson did not submit any evidence that she was entitled to a greater than 5% permanent partial disability award for her back injury. The Board of Review adopted the findings of the Office of Judges and affirmed its Order.

On appeal, Ms. Richardson requests that her case be remanded for an additional independent medical evaluation. Ms. Richardson argues that the August 29, 2011, assault caused psychological symptoms which were not accounted for in Dr. Sethi's 5% whole person impairment finding.

We agree with the conclusions of the Board of Review and the findings of the Office of Judges. Ms. Richardson has not demonstrated that she is entitled to any greater than a 5% permanent partial disability award for her compensable back injury. Dr. Sethi provided a thorough evaluation of Ms. Richardson's physical injuries under the American Medical Association's *Guides* and West Virginia Code of State Rules § 85-20-C. The evidence in the record supports his opinion and indicates that the 5% permanent partial disability award fully compensated Ms. Richardson for the physical disability caused by the August 29, 2011, injury. Ms. Richardson has not demonstrated that her case should be remanded for an additional independent medical evaluation. The record does not contain any specific diagnosis of a psychological condition related to this injury. If such a diagnosis is made at a later time, Ms. Richardson would be permitted to reopen her claim for a permanent partial disability award related to her psychological impairment.

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: June 27, 2014

CONCURRED IN BY:

Chief Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Menis E. Ketchum

Justice Allen H. Loughry II