

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**DENISE VIRDEN,
Claimant Below, Petitioner,**

**vs.) No. 17-0489 (BOR Appeal No. 2051670)
(Claim No. 2011010863)**

FILED

November 22, 2017
EDYTHE NASH GAISER, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

**THE HOMER LAUGHLIN CHINA COMPANY,
Employer Below, Respondent**

MEMORANDUM DECISION

Denise Virden was granted 0% permanent partial disability for her drug reaction with eosinophilia and systemic symptoms (DRESS syndrome). We are asked to determine whether the award was proper. We find that that it was based upon the evidentiary record. We further find upon consideration of the standard of review, the briefs, and the record, that there is no substantial question of law or prejudicial error necessitating oral argument. As such, a memorandum opinion is appropriate under Rule 21 of the Rules of Appellate Procedure.

Ms. Virden developed carpal tunnel syndrome as the result of her work activities. She also developed trigger finger of the right thumb and underwent a release of the trigger finger on August 3, 2012. Following the surgery, she developed an infection which was treated with antibiotics. Ms. Virden had an adverse reaction to the antibiotics, including a severe rash, and was diagnosed with a drug reaction, DRESS syndrome. Prior to the diagnosis of DRESS syndrome, Ms. Virden was awarded 3% permanent partial disability on April 2, 2012, as well as 6% permanent partial disability on September 17, 2013. On July 22, 2015, after the addition of DRESS syndrome as a compensable component of the claim, Ms. Virden was awarded 0% permanent partial disability for that aspect of the claim. This appeal followed.

Ms. Virden underwent independent medical evaluations by Sushil Sethi, M.D., Bruce Guberman, M.D., and ChuanFang Jin, M.D. Dr. Sethi evaluated Ms. Virden on July 2, 2015, when he noted Ms. Virden had mild right hand achiness but no rash and no recurrence of rash, eruption of the skin or any other suggestion of DRESS syndrome. Dr. Sethi assessed 0% impairment for the DRESS syndrome as there were no signs or symptoms of the disorder noted. Ms. Virden had no limitations in performing her activities of daily living, and she had required no follow-up treatment. He assessed her impairment according to Table 2 Class 1 on page 280 of the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993).

Dr. Guberman evaluated Ms. Virden on November 5, 2015. Ms. Virden told him she had sensitivity to heat, cold, and the sun which required the use of sunblock, and that her skin was very dry, even with the use of lotion. She also reported developing “pressure hives” when she sat or rested on a hard surface. The hives last for two to three days and improved with ointment. Dr. Guberman diagnosed bilateral carpal tunnel syndrome, postsurgical release; right thumb tenosynovitis, status postsurgical release; complication with infection of the surgical wound after trigger finger release; status post multiple debridement procedures; and history of drug reaction to antibiotics for MRSA infection of the right hand following trigger-finger release. He assessed 11% impairment for the right upper extremity for the right carpal tunnel syndrome and 3% impairment for the skin disorder which he combined for 14% whole person impairment. In Dr. Guberman’s opinion, Ms. Virden qualified for the higher impairment for the skin disorder due to her rash.

Dr. Jin evaluated Ms. Virden on June 29, 2016. She noted Ms. Virden developed trigger finger in the right thumb after her carpal tunnel surgery and underwent a release of the trigger finger of the right thumb on August 3, 2012. The surgical site became infected and Ms. Virden was treated with IV antibiotics to which she had an adverse reaction. She developed a severe skin eruption and was eventually diagnosed with DRESS. During the evaluation, Ms. Virden reported continued and constant moderate pain in her right hand as well as trouble holding things with her right hand and sensitivity to heat. Dr. Jin found no skin rash, skin atrophy, skin pigmentation, and no scar formation. She diagnosed history of bilateral carpal tunnel syndrome, status postsurgical release, right thumb tenosynovitis, status postsurgical release, complication with infection of the surgical wound after trigger finger release, status post multiple debridement procedures, and status post skin eruption with a diagnosis of DRESS syndrome. Dr. Jin noted Ms. Virden had not mentioned any problem with sensitivity to heat to her the first time she evaluated Ms. Virden. Additionally, Ms. Virden’s medical records showed she had not discussed heat sensitivity with her treating physicians. Dr. Jin assessed no ratable impairment due to the skin eruption as it was completely resolved with no objective evidence of ongoing pathology. In Dr. Jin’s opinion, the DRESS syndrome was healed and resolved.

In its October 17, 2016, Opinion, the Office of Judges noted Ms. Virden’s previous permanent partial disability awards. Ms. Virden asserted that she was entitled to an additional award of permanent partial disability based on Dr. Guberman’s report. The Office of Judges found that the weight of the evidentiary record established Ms. Virden had no impairment due to the DRESS syndrome. Dr. Guberman assessed 3% impairment for a skin disorder, but that assessment was not consistent with the reports of Drs. Jin and Sethi. Neither Dr. Jin nor Dr. Sethi found clinical evidence of a rash, ulcer, or change in her skin condition. Ms. Virden was no longer receiving treatment for the skin condition. The Office of Judges determined Dr. Guberman’s assessment was based solely upon Ms. Virden’s subjective complaints. Therefore, it found that she failed to demonstrate by a preponderance of the evidence that she had more than 0% permanent partial disability for the DRESS syndrome. The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its Order on April 28, 2017.

Ms. Virden, through her attorney Patrick Maroney, argues she is entitled to an additional 3% permanent partial disability award, based on the report of Dr. Guberman. The Homer Laughlin China Company, through its attorney Lucinda Fluharty, argues the reliable and probative evidence of record supports the award of 0% permanent partial disability.

After review, we agree with the findings of fact and conclusions of law of the Office of Judges as affirmed by the Board of Review. The American Medical Association's *Guides to the Evaluation of Permanent Impairment* states:

The signs and symptoms of disorders in classes 1 and 2 may be intermittent and not present at the time of the examination. The impact of the skin disorder on daily activities should be the primary consideration in determining the class of impairment. The frequency and intensity of signs and symptoms and the frequency and complexity of medical treatment should guide the selection of an appropriate impairment percentage and estimate within any class.

Dr. Guberman placed Ms. Virden in a class 1 impairment and assessed 3% impairment for the skin disorder, namely the rash. However, Drs. Jin and Sethi disagreed and both assessed 0% impairment. Their assessments are more in line with the American Medical Association's *Guides to the Evaluation of Permanent Impairment*. The skin disorder has no impact on Ms. Virden's activities of daily living other than the need for the daily use of lotion and the use of sunblock occasionally. Using the example espoused by Ms. Virden's attorney, she would need to exhibit some type of change in the pigmentation of the skin which was susceptible to sunburn and required the use of sunblock for outdoor work and other activities. Ms. Virden had no changes in pigmentation that made her more susceptible to sunburn and working outside was not part of her daily work activities. Ms. Virden had no residual impairment due to the DRESS syndrome. Therefore, the reliance on the reports of Drs. Jin and Sethi was not misplaced.

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 22, 2017

CONCURRED IN BY:

Chief Justice Allen H. Loughry II

Justice Robin J. Davis

Justice Margaret L. Workman

Justice Menis E. Ketchum

Justice Elizabeth D. Walker