

**STATE OF WEST VIRGINIA**

**SUPREME COURT OF APPEALS**

**FILED**

**JANIE GAIL CANTERBURY, Petitioner**

**March 26, 2012**  
**RORY L. PERRY II, CLERK**  
**SUPREME COURT OF APPEALS**  
**OF WEST VIRGINIA**

**vs.) No. 101480 (BOR Appeal No. 2044525)**  
**(Claim No. 2008023090)**

**WEST VIRGINIA OFFICE OF**  
**INSURANCE COMMISSIONER and**  
**MINGO COUNTY BOARD OF EDUCATION,**  
**Respondent**

**MEMORANDUM DECISION**

Petitioner Janie Gail Canterbury, by John Blair, her attorney, appeals the decision of the Board of Review. The Mingo County Board of Education, by Matthew Williams, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated October 21, 2010, in which the Board affirmed an April 27, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the claims administrator's September 16, 2008, decision to grant Ms. Canterbury a 15% permanent partial disability award, and granted her a 19% permanent partial disability award. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this matter is appropriate for consideration under the Revised Rules. Having considered the petition and the relevant decision of the lower tribunal, the Court is of the opinion that the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the Court determines that there is no prejudicial error. This case does not present a new or significant question of law. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

In its Order, the Office of Judges held that Ms. Canterbury is entitled to a 19% permanent partial disability award, in accordance with the opinion of Dr. Mukkamala. Ms. Canterbury disputes this finding and asserts, per the opinion of Dr. Poletajev, that she is entitled to a 39% permanent partial disability award. The Office of Judges found that Dr. Poletajev's report lacks credibility and is entitled to little weight, based primarily upon his finding that a disc protrusion is equivalent to a

herniated disc. The Office of Judges further found that Dr. Poletajev's findings were not substantiated by any of the other physicians who examined either Ms. Canterbury or her medical record. The Board of Review reached the same reasoned conclusion in its decision of October 21, 2010.

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 the Board's material misstatement or mischaracterization of the evidentiary record. Therefore, the decision of the Board of Review is affirmed.

Affirmed.

**ISSUED: March 26, 2012**

**CONCURRED IN BY:**

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh

**DISSENTING:**

Chief Justice Menis E. Ketchum