

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

BONNIE M. GREATHOUSE, Petitioner

May 7, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 11-0473 (BOR Appeal No. 2045014)
(Claim No. 2008032338)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
FREDDIE HUFFMAN JR., Respondent

MEMORANDUM DECISION

Petitioner Bonnie M. Greathouse, by Patrick Maroney, her attorney, appeals the West Virginia Workers' Compensation Board of Review's Order granting a 0% permanent partial disability award. Freddie Huffman Jr., by James Hesley, his attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated February 23, 2011, in which the Board affirmed an August 17, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's July 8, 2009, Order granting Ms. Greathouse a 0% permanent partial disability award for her lower back injury. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

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.

Ms. Greathouse was a cashier for Freddie Huffman Jr. when she injured her lower back while loading feed into a customer's vehicle. On October 27, 2008, the claims administrator held the claim compensable for a lumbar sprain/strain. The claims administrator granted the claimant a 0% permanent partial disability award on July 8, 2009. It based its decision on a finding by Dr. Mukkamala that although Ms. Greathouse suffered from a 5% impairment for the lumbar spine, she

had been fully compensated by a prior lumbar spine injury in which she received a 10% permanent partial disability award.

The Office of Judges, in affirming the claims administrator's Order, held that the preponderance of the evidence demonstrated that Ms. Greathouse was not entitled to an additional permanent partial disability award. Ms. Greathouse disagrees and asserts that because Dr. Mukkamala found she suffered from a 5% impairment, she is entitled to a 5% permanent partial disability award.

In reaching the decision to affirm the claims administrator's Order, the Office of Judges noted that Dr. Mukkamala found significant symptom magnification during his evaluation. The Office of Judges further noted that Ms. Greathouse failed to introduce evidence relevant to dispute Dr. Mukkamala's finding that she had been fully compensated by a prior permanent partial disability award. The Office of Judges concluded that Ms. Greathouse was not entitled to an additional permanent partial disability award. The Board of Review reached the same reasoned conclusion in its decision on February 23, 2011.

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 Board of Review's February 23, 2011, Order is affirmed.

Affirmed.

ISSUED: May 7, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Thomas E. McHugh

DISSENTING:

Justice Margaret L. Workman

Justice Brent D. Benjamin, Not Participating