

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

June 5, 2013
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

**SHERRY WORKMAN,
Claimant Below, Petitioner**

vs.) **No. 11-1320** (BOR Appeal No. 2045776)
(Claim No. 20009059456)

**THOMAS HEALTH SYSTEM, INC.,
Employer Below, Respondent**

MEMORANDUM DECISION

Petitioner Sherry Workman, by John C. Blair, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Thomas Health System, Inc., by Timothy E. Huffman, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated August 26, 2011, in which the Board affirmed a March 28, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the claims administrator's July 9, 2009, decision granting Ms. Workman a 5% permanent partial disability award for the lumbar sprain/strain. 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. Workman injured her lower back while working for Thomas Health Systems when she was pushing a patient in a wheeled hospital bed around a corner but the bed did not turn the corner. On September 22, 2008, the claims administrator held the claim compensable for lumbar sprain/strain. On July 9, 2009, the claims administrator granted Ms. Workman a 5% permanent partial disability award based on the report from Dr. Joseph Grady II, dated May 19, 2009.

The Office of Judges reversed the claims administrator's decision, and granted Ms. Workman an 8% permanent partial disability award based on Dr. Mukkamala's recommendation. On appeal, Ms. Workman disagrees and asserts that the Office of Judges erred in finding that Dr. Poletajev's report was not reliable because he rated non-compensable components when Dr. Poletajev's report is at least equal in evidentiary weight to the other reports of record because it was completed in accordance with the requirements of the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, (4th ed. 1993). Thomas Health System maintains that Ms. Workman failed to meet her evidentiary burden of proof that she is entitled to more than an 8% permanent partial disability award for her back injury. On August, 25, 2010, Dr. Mukkamala found Ms. Workman had reached maximum medical improvement. He determined under the range of motion model, she had 5% impairment for loss of range motion, and under Table 75, she had 5% whole person impairment. Therefore, he concluded Ms. Workman had a total whole person impairment of 8% under West Virginia Code of State Rules § 85-20 (2006).

The Office of Judges concluded that Dr. Poletajev's report was not credible because his impairment recommendations included radiculopathy and herniated disc, which are not compensable conditions. It noted that Dr. Mukkamala's recommendation for 8% whole person impairment for the compensable condition of lumbar sprain/strain was the most persuasive, and therefore, it adopted Dr. Mukkamala's recommendation. Ultimately, the Office of Judges held that Ms. Workman had an 8% impairment for the compensable injury. The Board of Review reached the same reasoned conclusions in its decision of August 26, 2011. We agree with the reasoning and conclusions of the Board of Review.

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 5, 2013

CONCURRED IN BY:

Chief Justice Brent D. Benjamin
Justice Robin J. Davis
Justice Margaret L. Workman
Justice Menis E. Ketchum
Justice Allen H. Loughry II