

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

JOANN LEWIS, Petitioner

December 16, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 101251 (BOR Appeal No. 2043816)
(Claim No. 2007228623)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
COLUMBIA GAS TRANSMISSION CORPORATION,
Respondent

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated September 2, 2010, in which the Board affirmed a February 18, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's Order granting Ms. Lewis 0% permanent partial disability for a right upper arm laceration injury. The appeal was timely filed by the petitioner and a response was filed by the Columbia Gas Transmission Corporation (hereinafter "Columbia Gas"). 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, response, 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.

The Board of Review reviewed the medical records and the three independent medical evaluations in determining Ms. Lewis did not have a disability sufficient for an award of permanent partial disability. Ms. Lewis asserts Dr. Bruce Guberman performed an evaluation finding Ms. Lewis suffers from 3% impairment due to her right arm laceration

injury due to loss of range of motion and scarring. Columbia Gas, on the other hand, argues Ms. Lewis was also examined by Drs. Christopher Martin and Bill Hennessey, both who found no permanent impairment due to the compensable injury.

The Office of Judges considered each of the independent medical evaluations setting forth the findings of each of the examining physicians. It found Ms. Lewis was entitled no award in accordance with Dr. Hennessey and Dr. Martin, who correctly referenced the AMA Guides, Fourth Edition. (February 18, 2010, Office of Judges Order, p. 5). Dr. Guberman's report was given less weight since his report is the only report to find deficits warranting impairment for range of motion and for scarring. *Id.* "The reports of Dr. Hennessey and Dr. Martin are in substantial agreement and therefore found to be the most persuasive and convincing." *Id.* The Office of Judges, too, found no basis for awarding Ms. Lewis an award for her right upper arm laceration or for disputing the Claims Administrator's findings. The Board of Review reached the same reasonable conclusion in affirming the Office of Judges in its decision of September 2, 2010.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of constitutional or statutory provision, clearly the result of erroneous conclusions of law, or is based upon the Board's material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the Court affirms the Board of Review Order denying a permanent partial disability award for Ms. Lewis' right upper arm laceration.

Affirmed.

ISSUED: December 16, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Menis E. Ketchum

Justice Thomas E. McHugh