

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

JACQUELINE OLBERT, Petitioner

vs.) **No. 101529 (BOR Appeal No. 2044476)**
(Claim No. 2001045721)

FILED

June 18, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
LOGAN MEDICAL FOUNDATION, Respondent**

MEMORANDUM DECISION

Petitioner, Jacqueline Olbert, by John C. Blair, appeals the Board of Review Order granting her a 5% psychiatric permanent partial disability award.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated November 8, 2010, in which the Board affirmed an April 23, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's May 11, 2009 Order, which granted Ms. Olbert a 5% psychiatric 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.

Having considered the parties' submissions 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 affirmed the Office of Judges' Order, which granted a 5% psychiatric permanent partial disability award following Ms. Olbert's December 3, 2000, compensable injury. Ms. Olbert argues that she is entitled to a 10% psychiatric permanent partial disability award per the report of Dr. Ahmed D. Faheem. Ms. Olbert states that this report was ignored by the Office of Judges, despite the report's compliance with West Virginia Psychiatric Guidelines.

The Office of Judges noted first that Ms. Olbert was initially granted the 5% psychiatric permanent partial disability award based upon the report of Dr. Casdorff. Ms. Olbert was also evaluated by Dr. Ahmed Faheem, who found 20% psychiatric impairment, 10% of which was attributable to her compensable injury. Dr. Charles Weise, who also evaluated Ms. Olbert, found 6% psychiatric permanent partial disability, 5% of which was attributable to her compensable injury. Additionally, Dr. Faheem found that Ms. Olbert possesses a global assessment of functioning

("GAF") of 50-55, while Dr. Weise found a GAF of 60. By reference to the West Virginia Workers' Compensation Impairment Guidelines for Rating Psychiatric Impairment, found in Rule 20, the Office of Judges noted that Dr. Faheem's 20% impairment finding would correspond to a GAF of 50-41. Symptoms of individuals with this level of functioning would be serious and include suicidal ideation or impairment levels that would significantly impede useful functioning. A patient with this level of functioning would require occasional to frequent inpatient hospitalization. This description, however, is not consistent with Ms. Olbert's psychiatric health. Ms. Olbert reported no suicidal thoughts, and she was able to perform tasks on her own.

Conversely, Dr. Weise's GAF finding of 60 corresponds to his 6% impairment rating (with 5% attributable to the compensable injury). Thus, the Office of Judges found Dr. Faheem's report to be inconsistent with the Tables provided in Rule 20 and Ms. Olbert's own reports of her level of functioning. It affirmed the grant of a 5% psychiatric permanent partial disability award, and the Board of Review reached the same reasoned conclusion in affirming the Office of Judges in its November 8, 2010, decision.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of 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 grant of a 5% psychiatric permanent partial disability award is affirmed.

Affirmed.

ISSUED: June 18, 2012

CONCURRED IN BY:

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh

DISSENTING:

Chief Justice Menis E. Ketchum