

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

MELISSA WAHNER, Petitioner

July 17, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 11-0200 (BOR Appeal No. 2045016)
(Claim No. 2008034306)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
PSYCHOLOGICAL ASSESSMENT & INTERVENTION,
Respondent

MEMORANDUM DECISION

Petitioner Melissa Wahner, by William Gerwig III, her attorney, appeals the West Virginia Workers' Compensation Board of Review's Order granting a 9% permanent partial disability award. Psychological Assessment & Intervention, by Timothy Huffman, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated January 24, 2011, in which the Board affirmed a September 8, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's August 13, 2009, decision granting the petitioner a 9% 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 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 this case, Ms. Wahner was working for Psychological Assessment & Intervention when she was injured. On June 5, 2008, the claims administrator held the claim compensable for a tear of the medial meniscus of the knee, a sacroiliac sprain/strain, lumbar region sprain/strain, neck sprain/strain, and a knee/leg sprain/strain. On June 9, 2009, Dr. Sethi performed an independent medical evaluation and found Ms. Wahner suffered from a 9% whole person impairment due to the

compensable injuries. The claims administrator, based on Dr. Sethi's report, granted Ms. Wahner a 9% permanent partial disability award on August 13, 2009.

Dr. Guberman performed an independent medical evaluation on February 12, 2010. His range of motion deficits were much greater and based on his findings he recommended that Ms. Wahner suffered from an additional 11% whole person impairment, for a total impairment of 20%. Additionally, Dr. Mukkamala performed an independent medical evaluation and found Ms. Wahner had already been fully compensated by the 9% award.

The Office of Judges, in affirming the claims administrator's Order, found that Ms. Wahner had sustained a 9% whole person impairment due to the compensable injuries. Ms. Wahner argues that Dr. Guberman's report is the most reliable evaluation on the record. Psychological Assessment & Intervention asserts that Ms. Wahner failed to prove by proper and sufficient evidence that she is entitled to an additional permanent partial disability award. The Office of Judges noted that while Dr. Sethi's impairment ratings were supported by sufficient objective findings, Dr. Guberman's findings were much greater than any other evidence of record. Additionally, the Office of Judges noted that Dr. Mukkamala was the only evaluator to find no range of motion deficits.

In reaching the conclusion that Ms. Wahner was not entitled to an additional permanent partial disability award, the Office of Judges considered the reports of Drs. Sethi, Guberman, and Mukkamala. It was determined that Dr. Sethi's report was the most persuasive and convincing. The Office of Judges found that there was insufficient evidence to support an additional 11% permanent partial disability award. The Board of Review reached the same reasoned conclusions in affirming the Office of Judges in its decision of January 24, 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 Order is affirmed.

Affirmed.

ISSUED: July 17, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin J. Davis
Justice Margaret L. Workman
Justice Thomas E. McHugh

Justice Brent D. Benjamin not participating