

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

May 22, 2013

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

JENNY L. SPENCER,
Claimant Below, Petitioner

vs.) **No. 11-1168** (BOR Appeal No. 2045574)
(Claim No. 2006019092)

BRAXTON COUNTY MEMORIAL HOSPITAL, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Jenny L. Spencer, by Gregory Sproles, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Braxton County Memorial Hospital, Inc., by H. Dill Battle III, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated July 19, 2011, in which the Board affirmed a February 9, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's December 17, 2009, decision granting Ms. Spencer a 7% permanent partial disability award for her radial nerve injury. 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. Spencer was injured while working for Braxton County Memorial Hospital when her feet became tangled in a phone cord. She suffered various injuries as a result of the incident, and has received permanent partial disability awards for those injuries. On December 17, 2009, the claims administrator granted Ms. Spencer a 7% permanent partial disability award for the radial nerve injury she suffered during the work-related incident.

The Office of Judges affirmed the claims administrator's Order, finding that the preponderance of the evidence did not establish that Ms. Spencer was entitled to more than a 7% permanent partial disability award. On appeal, Ms. Spencer disagrees and asserts that Dr. Snead's report is the most reliable, and thus she is entitled to a total of a 23% permanent partial disability award for the radial nerve injury. Braxton Memorial Hospital maintains that the 7% permanent partial disability award is correct. Dr. Mukkamala on November 2, 2009, found 7% whole person impairment for the radial nerve injury. Dr. Snead found that Ms. Spencer had 23% whole person impairment from the radial nerve injury on May 17, 2010. Dr. Bailey recommended 7% whole person impairment on December 10, 2010.

The Office of Judges found that the preponderance of the evidence supported the 7% permanent partial disability award. The Office of Judges noted that Dr. Snead's findings were not supported by EMG results. It concluded that Dr. Bailey's report correctly evaluated the radial nerve injury. Thus, the Office of Judges concluded that Ms. Spencer was not entitled to an additional permanent partial disability award for the radial nerve injury resulting from the work-related incident. The Board of Review reached the same reasoned conclusions in its decision of July 19, 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: May 22, 2013

CONCURRED IN BY:

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

DISSENTING:

Justice Menis E. Ketchum