

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

September 18, 2014

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

DEBORA L. WHITE,
Claimant Below, Petitioner

vs.) **No. 13-0735** (BOR Appeal No. 2047890)
(Claim No. 970061234)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER**
Commissioner Below, Respondent

and

WEIRTON MEDICAL CENTER, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Debora L. White, by M. Jane Glauser, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. The West Virginia Office of the Insurance Commissioner, by Jon Snyder, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated July 2, 2013, in which the Board affirmed an October 26, 2012, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's September 29, 2011, decision denying Ms. White's request for a permanent total disability award. 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. White filed an application for permanent total disability benefits on November 14, 2006. This Court notes that the record provided on appeal in support of Ms. White's request for further consideration of permanent total disability benefits is exceedingly limited. However, it appears that Ms. White received a 20% permanent partial disability award on August 19, 2006, for a right hip injury and received a 24% permanent partial disability award on November 3, 2006, for a left ankle injury. She was initially granted a 10% permanent partial disability award for the left ankle on September 24, 1999; however, this Court vacated that award based on a finding that it was premature on December 27, 2002. On September 29, 2011, the claims administrator denied Ms. White's request for permanent total disability benefits based on a finding that she has not amassed 50% in prior permanent partial disability awards, as is necessary for further consideration of permanent total disability benefits pursuant to West Virginia Code § 23-4-6(n)(1) (2005).

In its Order affirming the September 29, 2011, claims administrator's decision, the Office of Judges held that Ms. White has amassed a total of 44% in prior permanent partial disability awards, and has therefore not met the requirement that she have amassed 50% in prior permanent partial disability awards contained in West Virginia Code § 23-4-6(n)(1). The Board of Review affirmed the decision of the Office of Judges in its decision of July 2, 2013. On appeal, Ms. White asserts that she has amassed 54% in prior permanent partial disability awards and is therefore entitled to further consideration of her request for permanent total disability benefits.

On July 26, 2013, Ms. White filed a motion to remand her claim to the Permanent Total Disability Review Board alleging that she has amassed 54% in prior permanent partial disability awards. On September 24, 2013, this Court refused Ms. White's motion to remand her claim. As noted by the Office of Judges, potential additional permanent partial disability awards pending at the time of Ms. White's permanent total disability application are irrelevant, as it is clear that a claimant must have been previously awarded 50% in prior permanent partial disability awards to move forward with an application for permanent total disability benefits pursuant to West Virginia Code § 23-4-6(n)(1). The Office of Judges determined that at the time of her application, Ms. White had received a 20% permanent partial disability award and a 24% permanent partial disability award, for a total of 44% in prior permanent partial disability awards.

The Office of Judges noted that Ms. White, in asserting that she has amassed 54% in prior permanent partial disability awards, references the 10% permanent partial disability award initially granted on September 24, 1999. However, Ms. White fails to note in her argument that the award was vacated based on a finding that it was premature by this Court on December 27, 2002. The Office of Judges properly determined that the vacated 10% permanent partial disability award cannot be included in the tally of permanent partial disability awards contributing towards the requisite 50% in aggregate permanent partial disability awards. Therefore, the Office of Judges determined that because Ms. White has only received 44% in prior permanent partial disability awards, she has fallen short of the requisite 50% in aggregated prior permanent partial disability awards necessary for further consideration of permanent total disability benefits. We agree with the reasoning and conclusions of the Office of Judges, which were affirmed by the Board of Review. Ms. White has failed to demonstrate that she amassed

50% in prior permanent partial disability awards, as is required for further consideration of permanent total disability benefits pursuant to West Virginia Code § 23-4-6(n)(1).

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: September 18, 2014

CONCURRED IN BY:

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