

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

RUTH RICHARDS,
Claimant Below, Petitioner

vs.) **No. 18-0619** (BOR Appeal No. 2052721)
(Claim No. 2017010065)

AMERICAN MEDICAL FACILITIES MANAGEMENT,
Employer Below, Respondent

FILED

April 25, 2019

EDYTHE NASH GAISER, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Ruth Richards, by William Gerwig III, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. American Medical Facilities Management, by Steven Wellman, its attorney, filed a timely response.

The issue on appeal is permanent partial disability. The claims administrator granted a 1% permanent partial disability award on March 22, 2017. The Office of Judges affirmed the decision in its March 14, 2018, Order. The Order was affirmed by the Board of Review on July 2, 2018.

The Court has carefully reviewed the records, written arguments, and appendices contained in the briefs, and the case is mature for consideration. 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. Richards, a certified nursing assistant, was injured in the course of her employment on October 13, 2016, when she fell. A cervical CT scan the following day noted that it was performed due to Ms. Richards falling and hitting her head and neck the day before. The CT showed mild degenerative changes but no acute findings. The claim was held compensable for fracture of the right fibula, head injury, and cervical strain.

Ms. Richards was treated by Frederick Pollock, M.D., and on December 27, 2016, he noted that she was there for follow up for her broken ankle. She had full range of motion in the ankle, and x-rays showed that the fibula fracture healed well. Dr. Pollack recommended two more weeks of physical therapy. On January 12, 2017, Dr. Pollock again noted full range of motion and

recommended she continue physical therapy. In a February 3, 2017, treatment note, Aimee Gue, FNP-C, noted that Ms. Richards reported ankle pain since October. She stated that she had pain and swelling daily in her ankle. She had not been able to return to work. Ms. Gue prescribed a tall boot.

On March 17, 2017, Prasadarao Mukkamala, M.D., performed an independent medical evaluation in which he noted that Ms. Richards was released to return to work by Dr. Pollock but was still under the care of Dr. Knapp. He noted the compensable conditions as right fibula fracture, head injury, and cervical sprain. Dr. Mukkamala determined that Ms. Richards had reached maximum medical improvement. Using the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (4th ed 1993), Dr. Mukkamala assessed 0% impairment for the head injury. He found 5% impairment for the cervical spine using range of motion. He placed Ms. Richards in Cervical Category I of West Virginia Code of State Rules § 85-20-E (2006) which allows for 0% impairment and adjusted the assessment accordingly. Dr. Mukkamala found that Ms. Richards had mild limitation of hind foot range of motion. This amounted to 1% impairment for the right ankle. His total assessment was therefore 1% impairment. The claims administrator granted a 1% permanent partial disability award based on his assessment on March 22, 2017.

Ms. Richards was treated by James Thomas, M.D., on April 26, 2017. Dr. Thomas noted that she fractured her ankle in October of 2016. X-rays taken in March of 2017 showed good progressive healing. Ms. Richards reported a very low pain level with standing and walking and no pain on rest. She had full range of motion of the foot and ankle. Dr. Thomas stated that her ankle was completely healed.

On June 8, 2017, Bruce Guberman, M.D., performed an independent medical evaluation in which he assessed 4% impairment for the right ankle for range of motion abnormalities. For the cervical spine, he placed Ms. Richards in Category IIB of Table 75 from the American Medical Association's *Guides* for 4% impairment. Cervical range of motion showed 2% impairment. Dr. Guberman placed Ms. Richards in Cervical Category II from West Virginia Code of State Rules § 85-20-E, which allows for 5-8% impairment. He therefore adjusted the cervical impairment to 8%. His total recommended impairment for the compensable injury was 12%.

Marsha Bailey, M.D., performed an independent medical evaluation on November 7, 2017. She found that Ms. Richards had reached maximum medical improvement. For the cervical sprain, Dr. Bailey assessed 0% impairment. The cervical range of motion measurements were pain restricted and not valid. Dr. Bailey stated that Ms. Richards reported no neck pain at the time of the examination and only some soreness with certain motions. Dr. Bailey placed Ms. Richards in Cervical Category I from West Virginia Code of State Rules § 85-20-E for 0% impairment. Dr. Bailey stated that there are thirteen models within the American Medical Association's *Guides* for rating lower extremity impairment but Ms. Richards is not eligible for an impairment under any of them. Her right ankle range of motion was normal, and Dr. Bailey assessed 0% impairment. She also found no impairment for the head injury.

On March 14, 2018, the Office of Judges affirmed the claims administrator's grant of a 1% permanent partial disability award. It found that there are three evaluations of record. Dr. Mukkamala found 1% impairment, Dr. Guberman found 12%, and Dr. Bailey found 0%. The Office of Judges found Dr. Guberman's impairment assessment to be an outlier in regard to cervical impairment. Ms. Richards has not been treated for a cervical injury. Dr. Bailey found 0% cervical impairment but her range of motion measurements were invalid. The Office of Judges relied on Dr. Mukkamala's assessment in which he found 0% cervical impairment. All three evaluators of record found 0% impairment for the compensable head injury. For the right ankle, Drs. Mukkamala and Guberman both found 1% range of motion impairment. Dr. Guberman also found additional impairment for plantar flexion and dorsiflexion. The Office of Judges found that Ms. Richards's right ankle was determined to have normal range of motion by Dr. Pollock on January 12, 2017, and Dr. Thomas on April 26, 2017. The Office of Judges concluded that Dr. Guberman's finding of 12% impairment was not supported by Ms. Richards's treatment and other medical records. Dr. Baileys' report was also found to be less credible because she did not find valid range of motion measurements. Dr. Mukkamala's report and finding of 1% impairment was determined to be the most reliable of record. The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its Order on July 2, 2018.

After review, we agree with the reasoning and conclusions of the Office of Judges as affirmed by the Board of Review. The Office of Judges was not wrong to rely on Dr. Mukkamala's report. Dr. Guberman's report found impairment well beyond that of the other evaluators of record, and his findings are not supported by the evidentiary record. Dr. Bailey's report failed to find valid range of motion measurements. Dr. Mukkamala's report was supported by the evidentiary record and is therefore the most reliable.

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: April 25, 2019

CONCURRED IN BY:

Chief Justice Elizabeth D. Walker
Justice Margaret L. Workman
Justice Tim Armstead
Justice Evan H. Jenkins
Justice John A. Hutchison