

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

January 14, 2014

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

LORETTA D. FIELDS,
Claimant Below, Petitioner

vs.) **No. 12-0790** (BOR Appeal No. 2046604)
(Claim No. 2009067747)

P.R.I.D.E. IN LOGAN COUNTY, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Loretta D. Fields, by Wendle D. Cook, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. P.R.I.D.E. in Logan County, Inc., by Steven K. Wellman, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated May 31, 2012, in which the Board affirmed an October 24, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's May 27, 2009, decision granting the petitioner a 5% permanent partial 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. Fields was injured in the course of her employment when she was carrying bags of garbage. An x-ray of the left hip that was taken on the day of injury showed evidence of congenital dysplastic changes. Her claim was held compensable for left hip/thigh sprain/strain and lumbar sprain/strain. She was awarded a 5% permanent partial disability award by the claims administrator on May 27, 2009. The award was based on an independent medical evaluation conducted by Dr. Bruce Guberman. Using the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, (4th Edition, 1993), Dr. Guberman determined that Ms.

Fields suffered from 5% impairment of her lumbar spine and 0% impairment of her left hip. He reviewed her medical records and found that she had a congenital hip defect and had undergone two surgeries for the condition in the past. He determined that she had reached maximum medical improvement for her compensable injuries. He also determined that she exhibited symptom magnification.

Dr. Guberman's opinion was supported by the opinion of Dr. Robert McCleary. He found that Ms. Fields had reached maximum medical improvement for her hip until such time that she could have a total hip replacement to treat the hip dysplasia. In a treatment note dated April 28, 2009, Dr. McCleary concluded that her need for a total hip replacement was secondary to her pre-existing hip defect. A physician review by Dr. Chuanfang Jin also found that Ms. Fields's problems were related to her congenital left hip dysplasia.

Based on these reports, the Office of Judges affirmed the decision of the claims administrator in its October 24, 2011, Order. The Office of Judges found that the only report of record that provided an impairment rating for Ms. Fields's compensable conditions was the report of Dr. Guberman. Ms. Fields argued that Dr. Guberman did not rate her left hip in his evaluation. The Office of Judges found that Dr. Guberman's report indicates that he did rate her left hip. Though he found range of motion loss, Dr. Guberman determined that it was unreliable for rating purposes, because the range of motion abnormalities were limited by pain.

Ms. Fields also asserted that Dr. Guberman should have performed manual muscle testing to test muscle weakness. The Office of Judges found that the evidentiary record indicated that Dr. Guberman's examination was difficult, because Ms. Fields displayed evidence of symptom magnification. In order to perform a manual muscle test the claimant must be cooperative. The Office of Judges determined that Dr. Guberman's findings were supported by the functional capacity evaluation conducted by Dr. Ellis which also found evidence of symptom magnification. Therefore, the Office of Judges concluded that Dr. Guberman's choice not to use manual muscle testing was supported by the evidentiary record. The Office of Judges found that Dr. Guberman performed a thorough examination of Ms. Fields. This conclusion, the Office of Judges found, was also supported by the fact that although Dr. Guberman did not find any impairment of the left hip, he did review the applicable table for estimating lower extremity impairments.

Ms. Fields also argued that the severity of her hip injury is demonstrated by the fact that Dr. McCleary determined that she required a total hip replacement. The Office of Judges found that this argument was not supported by the evidentiary record. The record indicates that Ms. Fields's need for a total hip replacement is the result of pre-existing hip dysplasia and not her compensable hip sprain/strain. The Office of Judges held that this is evidenced by the opinion of Dr. McCleary and x-rays of the left hip.

Lastly, the Office of Judges found that the decision of the claims administrator was supported by the opinion of Dr. Jin. In her physician review report, Dr. Jin found that a sprain/strain of the hip was a self-limiting condition that generally resolves within several weeks. The Office of Judges found that this report supported Dr. Guberman's finding that Ms. Fields

was at maximum medical improvement. It also found that the report supported the proposition that Ms. Fields's symptoms are more likely due to her pre-existing left hip dysplasia and not her compensable hip sprain/strain.

The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its Order in its May 31, 2012, decision. This Court agrees with the reasoning and conclusions of the Board of Review. Dr. Guberman is the only physician on the record that rated Ms. Fields's impairment. The evidence indicates that he conducted a thorough examination of her. His findings and conclusions are supported by the reports of Drs. Ellis, McCleary, and Jin. Lastly, Ms. Fields failed to submit any evidence that contradicted Dr. Guberman's ratings. It appears from the evidentiary record that Ms. Fields's current problems are the result of her pre-existing hip dysplasia. Therefore, we find that the evidentiary record clearly supports the decision 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: January 14, 2014

CONCURRED IN BY:

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

Justice Brent D. Benjamin, Not Participating