

**STATE OF WEST VIRGINIA  
SUPREME COURT OF APPEALS**

**MARK A. COOK,  
Claimant Below, Appellant**

**vs. No. 35725 (BOR No. 2043525)  
(Claim No. 2008009660)**

**FILED**

**May 12, 2011**

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

**WEST VIRGINIA OFFICE INSURANCE  
COMMISSION, Commissioner Below, Appellee  
and  
North Coast Energy Eastern, Inc., Employer  
Below, Appellee**

**MEMORANDUM DECISION**

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated March 9, 2010, which reversed an August 26, 2009 Order of the Workers' Compensation Office of Judges and granted Mark A. Cook, the appellant, a 4% permanent partial disability award for bilateral carpal tunnel syndrome. In its order, the Office of Judges granted Mark A. Cook, the appellant, a 12% permanent partial disability award for bilateral carpal tunnel syndrome. The order of the Office of Judges reversed the order of the West Virginia Office Insurance Commission that granted the appellant a 4% Permanent partial disability award.

This Court has carefully reviewed the records, briefs, and appendices contained in the record, and the case is now mature for consideration. The Court is of the opinion that the decisional process would not be significantly aided by oral argument. In addition, 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.

The appellant, a gas well tender for Appellee North Coast Energy Eastern, Inc., was diagnosed with bilateral carpal tunnel syndrome which was held to be compensable. The appellant underwent bilateral carpal release.

The issue in this case is whether the appellant should receive a 4% permanent partial disability award or a 12% permanent partial disability award for his bilateral carpal tunnel syndrome. The relevant evidence in this case is as follows. The employer's evidence includes a January 22, 2008 report of Dr. A.E. Landis. According to Dr. Landis, the

appellant's impairment would be placed no higher than the mild category for median nerve entrapment and he would be entitled to 2% whole-person impairment for each hand. The employer also submitted the March 25, 2009 report of Dr. Prasadarao Mukkamala who indicated that the appellant was 25% overweight. He felt that this is a significant risk factor for carpal tunnel syndrome and therefore he apportioned 2% of the entire rating to a risk factor in the form of excess weight leaving 2% for the appellant's claim. Dr. Mukkamala concluded that since the appellant had received 4% impairment, he had been overcompensated. Finally, the employer submitted an October 20, 2008 deposition transcript taken of the appellant. According to the appellant, after his bilateral release surgery, his symptoms improved for six to eight months, but now his left hand is worse than it was before the surgery and his right one, he said, is not far behind. He said the heel of his hands now swell after he performs work with them for 10 or 15 minutes.

The appellant submitted into evidence the November 17, 2008 report of Dr. Bruce A. Guberman. Dr. Guberman said the appellant was at maximum medical improvement. He referred to Table 11, Table 15 and Table 12 of the AMA Guides and obtained 7% whole-person impairment for the right side and 7% whole-person impairment for the left side. He referred to Rule 20 and said this would be reduced to 6% whole-person impairment per side, which was his recommended rating. He combined the ratings for the left and right side and obtained 12% whole-person impairment.

The appellant also submitted into evidence a report of J. O. Othman dated June 2, 2008. This was an EMG/NCS result for the bilateral upper extremities. He found moderately severe bilateral carpal tunnel syndrome. Comparing this study with the test prior to surgery, the left side was significantly worse. In response to the Othman report, the Employer submitted an addendum by Dr. Landis in which Dr. Landis disagreed with Dr. Othman's statement that the appellant has moderately severe bilateral carpal tunnel syndrome. According to Dr. Landis, from a clinical standpoint the appellant had no significant, if any, findings of carpal tunnel syndrome. Thus, he did not think that the EMG/NCV study was accurate nor did it correlate with the clinical findings. Dr. Landis particularly disagreed with the statement that there had been significant progression in the findings.

By order dated August 26, 2009, the Office of Judges reversed the Commission's order granting the appellant a 4% Permanent partial disability award, and granted the appellant a 12% award. The Office of Judges found that Dr. Landis failed to utilize the AMA Guides at all. Dr. Landis did not utilize the Table 15 methodology or the Table 16 methodology. In addition, Dr. Landis referred to Rule 20 and placed the appellant in the "mild category" of median nerve entrapment, but the Office of Judges found that there is no such category listed in Rule 20 for carpal tunnel syndrome. Thus, the Office of Judges

concluded that Dr. Landis did not properly utilize Rule 20 and the AMA Guides as required. With regard to Dr. Mukkamala's report, the Office of Judges found that Dr. Mukkamala overemphasized the appellant's weight since the claim had already been held compensable for carpal tunnel syndrome. Also, the Office of Judges found that Dr. Mukkamala's reliance upon his table, which Dr. Mukkamala said indicated the appellant was 25% overweight, did not provide an objective methodology for apportioning for carpal tunnel syndrome. Thus, the Office of Judges concluded that Dr. Mukkamala's apportionment methodology was purely subjective. Therefore, the Office of Judges found that Dr. Mukkamala's report is not as credible as Dr. Guberman's. According to the Office of Judges, Dr. Guberman's report best characterizes the amount of impairment suffered by the appellant. The Office of Judges concluded that Dr. Guberman's report is quite thorough and properly utilized the AMA Guides and Rule 20.

In its March 9, 2010 order, the Board of Review reversed the Office of Judges and granted the appellant a 4% permanent partial disability award. In its order, the Board stated that it "finds the [Office of Judges'] final order's analysis and conclusions were clearly wrong in view of the reliable, probative and substantial evidence on the whole record." After stating the recommendations of Drs. Landis, Guberman, and Mukkamala, the Board found "the report of Dr. Landis and Dr. Mukkamala's rating prior to apportionment [to be] relevant, credible, material and reliable."

In light of the above evidence, this Court reverses the Board of Review's March 9, 2010 order and remands for reinstatement of the Office of Judges' order that granted the appellant a 12% permanent partial disability award for bilateral carpal tunnel syndrome. According to W. Va. Code § 23-5-12(c)(1) (2006), "[a]ll decisions, findings of fact and conclusions of law of the board of review shall be in writing and state with specificity the laws and facts relied upon to sustain, reverse or modify the administrative law judge's decision." In the instant case, the Office of Judges explained at substantial length and with specificity why the recommendation of Dr. Guberman is more credible than the recommendations of Drs. Landis and Mukkamala. In reversing the Office of Judges' decision, the Board of Review summarily determined that "the report of Dr. Landis and Dr. Mukkamala's rating prior to apportionment are relevant, credible, material and reliable[.]" and did not state with specificity the laws and facts relied upon to reverse the Office of Judges' order. This is in plain contravention of the relevant statutory language.

For this reason, this Court reverses the order of the Worker's Compensation Board of Review, dated March 9, 2010, in Claim No. 2008009660, Workers' Compensation Board of Review No. 2043525, as it is in clear violation of statutory provisions, and the Court remands this case for reinstatement of the Office of Judges' August 26, 2009 order that granted the appellant a total of 12% permanent partial disability as a result of the appellant's

compensable bilateral carpal tunnel syndrome.

Reversed and Remanded with Directions.

**ISSUED: May 12, 2011**

**CONCURRED IN BY:**

**Chief Justice Margaret L. Workman**

**Justice Robin J. Davis**

**Justice Brent D. Benjamin**

**Justice Menis E. Ketchum II**

**Justice Thomas E. McHugh**