

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

March 18, 2014

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

**LEROY PHILIP MULLINS,
Claimant Below, Petitioner**

vs.) **No. 12-0680** (BOR Appeal No. 2046526)
(Claim No. 940006674)

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

and

**BETHENERGY MINES, INC.,
Employer Below, Respondent**

MEMORANDUM DECISION

Petitioner Leroy Philip Mullins, by Wendle Cook, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. The West Virginia Office of Insurance Commissioner, by Jon Snyder, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated May 4, 2012, in which the Board affirmed a September 23, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges modified the claims administrator's July 30, 2010, decision finding that Mr. Mullins has been fully compensated for his compensable injury through a prior 3.5% 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.

Mr. Mullins was injured on August 16, 1993, when he stepped into a hole and struck his back on an electrical cable. The claim was held compensable for lumbosacral sprain and Mr. Mullins was granted permanent partial disability awards totaling 12% for the lumbar spine. On July 7, 2008, Mr. Mullins underwent an independent medical evaluation performed by Bruce Guberman, M.D. He recommended an additional 1% permanent partial disability award for the lumbar spine and a 10% permanent partial disability award for urological problems that he found to be related to the August 16, 1993, injury. On January 12, 2010, Prasadarao Mukkamala, M.D., performed an independent medical evaluation and found that Mr. Mullins was fully compensated for the lumbar spine through the prior 12% award. He found that there is no causal relationship between Mr. Mullins's urological problems and the compensable injury of August 16, 1993. Dr. Mukkamala further found that Dr. Guberman based his impairment recommendation on a finding that Mr. Mullins suffers from radiculopathy, but that there is no objective evidence of radiculopathy in the evidentiary record. On July 30, 2010, the claims administrator found that Mr. Mullins had been fully compensated by a prior 3.5% permanent partial disability award.

The Office of Judges modified the claims administrator's July 30, 2010, decision and held that Mr. Mullins is fully compensated for the August 16, 1993, injury through his prior 12% award. Mr. Mullins disputes this finding and asserts that he is entitled to an increased permanent partial disability award based on the opinion of Dr. Guberman.

The Office of Judges found Dr. Mukkamala's report to be the most persuasive, and further found that Dr. Guberman's recommendation cannot be followed because he took into consideration conditions that are not compensable components of the claim. The Board of Review reached the same reasoned conclusions in its decision of May 4, 2012. 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: March 18, 2014

CONCURRED IN BY:

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

DISSENTING:

Justice Margaret L. Workman
Justice Menis E. Ketchum