

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

February 4, 2014

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

STEVEN WHITTINGTON,
Claimant Below, Petitioner

vs.) **No. 12-0697** (BOR Appeal No. 2046961)
(Claim No. 2009081604)

HARDMAN SUPPLY COMPANY,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Steven Whittington, by William Gerwig III, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Hardman Supply Company, by Sean Harter, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated June 1, 2012, in which the Board affirmed a February 28, 2012, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's February 21, 2012, decision granting the petitioner a 13% 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. Whittington was injured in the course of his employment when he fell while fixing a ceiling tile. He suffered an injury to his lumbar spine, and on February 21, 2011, the claims administrator granted him a 13% permanent partial disability award. This award was based upon an independent medical evaluation by Dr. Prasadarao Mukkamala. Dr. Mukkamala rated Mr. Whittington at 15% whole person impairment using the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, (4th ed. 1993). Pursuant to West Virginia Code of State Rules § 85-20-Table C (2006), Dr. Mukkamala adjusted the impairment rating to 13%.

The Office of Judges upheld the decision of the claims administrator in its February 28, 2012, Order. It noted that Dr. Mukkamala properly used the American Medical Association's *Guides*, and West Virginia Code of State Rules § 85-20-Table C to find Mr. Whittington's impairment rating. The Office of Judges found that this Court upheld the use of the Rule 20 guidelines to determine permanent impairment in *Simpson v. WVOIC*, 223 W.Va. 495, 678 S.E.2d 1 (2009). Finally, the Office of Judges found that Dr. Mukkamala's evaluation was reliable and unrefuted. Thus, it held that Mr. Whittington was entitled to a 13% permanent partial disability award. The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its Order in its June 1, 2012, decision. This Court agrees 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: February 4, 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