

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

June 27, 2014

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

FREDDIE BROWNING,
Claimant Below, Petitioner

vs.) **No. 13-0183** (BOR Appeal No. 2047541)
(Claim No. 2010133588)

BRAYMAN CONSTRUCTION,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Freddie Browning, by Wendle D. Cook, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Brayman Construction, by Lisa Warner Hunter, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated January 25, 2013, in which the Board affirmed a July 19, 2012, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's February 23, 2011, decision granting Mr. Browning a 0% 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. Browning worked for Brayman Construction. On April 29, 2010, Mr. Browning developed low back pain after pulling on a pump. The claims administrator held his claim compensable. Following the injury, Mohammed Ranavaya, M.D., evaluated Mr. Browning and found that he had no impairment related to this injury. On February 23, 2011, the claims administrator granted Mr. Browning a 0% permanent partial disability award based on Dr. Ranavaya's evaluation. Bruce A. Guberman, M.D., then evaluated Mr. Browning and determined that he had 13% whole person impairment under the American Medical Association's *Guides to*

the Evaluation of Permanent Impairment (4th ed. 1993). Dr. Guberman found that Mr. Browning had previously received a permanent partial disability award related to a March 7, 2005, lumbar strain and apportioned 9% of Mr. Browning's impairment to his prior injury. Dr. Guberman then adjusted the remaining 4% impairment to a 5% whole person impairment rating to fit within Lumbar Category II of West Virginia Code of State Rules § 85-20-C (2006). Prasadarao B. Mukkamala, M.D., also evaluated Mr. Browning and determined that he had 14% impairment under the American Medical Association's *Guides*. Dr. Mukkamala adjusted this rating to 8% to fit within Lumbar Category II of West Virginia Code of State Rules § 85-20-C. Dr. Mukkamala noted that Mr. Browning had received a prior permanent partial disability award on March 7, 2005, and apportioned the entire impairment rating related to Mr. Browning's lumbar spine to this prior injury. On July 19, 2012, the Office of Judges affirmed the claims administrator's decision. The Board of Review affirmed the Order of the Office of Judges on January 25, 2013, leading Mr. Browning to appeal.

The Office of Judges concluded that the evidence established that Mr. Browning had been fully compensated for his lumbar spine injury and was not entitled to any additional permanent partial disability award. The Office of Judges based this determination on the evaluations of Dr. Ranavaya and Dr. Mukkamala. The Office of Judges also considered the independent medical evaluation of Dr. Guberman. However, the Office of Judges determined that Dr. Guberman incorrectly apportioned for Mr. Browning's prior 8% permanent partial disability award prior to adjusting his rating to fit within Lumbar Category II of West Virginia Code of State Rules § 85-20-C. The Office of Judges found that Dr. Guberman's impairment rating would provide Mr. Browning with a double recovery for the same disability. The Board of Review adopted the findings of the Office of Judges and affirmed its Order.

We agree with the conclusion of the Board of Review and the findings of the Office of Judges. Mr. Browning has not demonstrated that he is entitled to any additional permanent partial disability award. Dr. Mukkamala's independent medical evaluation shows that Mr. Browning has 8% impairment of his lumbar spine. Dr. Mukkamala properly evaluated Mr. Browning's disability under the American Medical Association's *Guides* and West Virginia Code of State Rules § 85-20-C. Mr. Browning has previously received an 8% permanent partial disability award related to his March 7, 2005, back strain. Dr. Mukkamala also properly apportioned for his prior award and determined that Mr. Browning has already been fully compensated for his injuries. The Office of Judges was also justified in not relying on Dr. Guberman's impairment assessment. Dr. Guberman incorrectly apportioned for Mr. Browning's prior permanent partial disability award before adjusting his American Medical Association's *Guides* impairment rating to fit within West Virginia Code of State Rules § 85-20-C. Dr. Guberman's impairment rating would have provided Mr. Browning with an additional recovery beyond what is supported by the evidence in the record.

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: June 27, 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