

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

June 1, 2015

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

**CARVEN C. WILLIAMS,
Claimant Below, Petitioner**

vs.) **No. 14-0947** (BOR Appeal No. 2049360)
(Claim No. 2013015249)

**MIDLAND TRAIL ENERGY, LLC,
Employer Below, Respondent**

MEMORANDUM DECISION

Petitioner Carven C. Williams, by Edwin Pancake, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Midland Trail Energy, LLC, by Henry Bowen, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated August 22, 2014, in which the Board affirmed a March 17, 2014, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's March 14, 2013, decision granting Mr. Williams a 0% permanent partial disability award for occupationally-induced hearing loss. 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. Williams was evaluated by Charles Abraham, M.D., on October 24, 2012, following complaints of hearing loss. Mr. Williams reported that he was exposed to noise generated by continuous miners, along with various other pieces of heavy machinery, and noise generated through the use of industrial explosives in the course of his employment as an underground coal miner beginning in 1975. Dr. Abraham opined that Mr. Williams sustained 3.12% whole person impairment as a result of occupationally-induced hearing loss. Following Dr. Abraham's

evaluation, Mr. Williams filed a Report of Occupational Hearing Loss, which was signed by Dr. Abraham.

David Phillips, M.D., evaluated Mr. Williams on January 30, 2013. He opined that an audiogram performed in his office was consistent with an audiogram performed by Dr. Abraham and revealed normal sloping to severe high frequency hearing loss in the right ear with a similar bone conduction pattern present in the left ear. Dr. Phillips opined that Mr. Williams demonstrates a very significant asymmetric conductive hearing loss pattern which should not be attributed to occupational noise exposure. He noted that the pattern of asymmetric hearing loss was also present in Dr. Abraham's audiogram but was not discussed. Finally, he opined that Mr. Williams's level of hearing loss is far below the threshold required to achieve any level of impairment rating and rated Mr. Williams's hearing loss at 0% whole person impairment.

On March 14, 2013, the claims administrator granted Mr. Williams a 0% permanent partial disability award based upon Dr. Phillips's evaluation. In its Order affirming the March 14, 2013, claims administrator's decision, the Office of Judges held that Mr. Williams has failed to establish that he sustained noise-induced hearing loss which would entitle him to a permanent partial disability award. The Board of Review affirmed the reasoning and conclusions of the Office of Judges in its decision dated August 22, 2014. On appeal, Mr. Williams asserts that the evidence of record demonstrates that he is entitled to a 3.12% permanent partial disability award for occupationally-related noise-induced hearing loss.

The Office of Judges found that both audiograms of record were similar with good reliability ratings, and further found that both audiograms reveal the presence of asymmetrical air conduction when comparing the right and left ears. In reliance upon Dr. Phillips's opinion, the Office of Judges found that he reasonably explained the results showing asymmetrical air conduction, while Dr. Abraham failed to address the issue. Finally, the Office of Judges found that Dr. Phillips opined that the asymmetrical test results are not indicative of occupationally-related noise-induced hearing loss. We agree with the reasoning and conclusions of the Office of Judges as affirmed by 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: June 1, 2015

CONCURRED IN BY:

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