

**STATE OF WEST VIRGINIA**

**SUPREME COURT OF APPEALS**

**FILED**

**STEVEN BRUCE JARRELL, Petitioner**

**November 15, 2011**  
**RORY L. PERRY II, CLERK**  
**SUPREME COURT OF APPEALS**  
**OF WEST VIRGINIA**

**vs.) No. 101244 (BOR Appeal No. 2044205)**  
**(Claim No. 2006206234)**

**WEST VIRGINIA OFFICE OF  
INSURANCE COMMISSIONER and  
SPARTAN MINING COMPANY, Respondent**

**MEMORANDUM DECISION**

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated September 1, 2010, in which the Board affirmed a March 1, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the claims administrator's October 3, 2007, decision granting Mr. Jarrell a 2% permanent partial disability award on a psychiatric basis, and instead granted Mr. Jarrell a 3% permanent partial disability award on a psychiatric basis. The appeal was timely filed by the petitioner and a response was filed by the Employer. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this matter is appropriate for consideration under the Revised Rules. Having considered the petition and the relevant decision of the lower tribunal, the Court is of the opinion that the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the Court determines that there is no prejudicial error. 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.

In its Order, the Office of Judges held that Mr. Jarrell was entitled to a 3% permanent partial disability award on a psychiatric basis. Mr. Jarrell disputes this finding and asserts that there is no credible basis for the Office of Judges' decision that the opinion of Dr. Riaz is unreliable.

In making its decision, the Office of Judges found that the opinions of Dr. Ovington and Dr. Weise are very similar, in that both diagnosed Mr. Jarrell with depressive disorder and both noted the exhibition of some panic behavior. Dr. Ovington recommended a permanent partial disability award of 2%, while Dr. Weise recommended a permanent partial disability award of 3%. The Office of Judges found Dr. Riaz's recommendation of a 15% permanent partial disability award to be in contrast with that of Dr. Ovington and Dr. Weise. The Office of Judges found that the cause of this discrepancy was Dr. Riaz's diagnosis of two more severe disorders, namely major depression and agoraphobia. The Office of Judges also found that Mr. Jarrell's treating physician, Dr. Casdorff, initially diagnosed Mr. Jarrell with major depression and then revised his diagnosis to depressive disorder after further evaluation. The Board of Review reached the same reasoned conclusion in its decision of September 1, 2010.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of constitutional or statutory provision, clearly the result of erroneous conclusions of law, or is based upon the Board's material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the decision of the Board of Review is affirmed.

Affirmed.

**ISSUED: November 15, 2011**

**CONCURRED IN BY:**

Chief Justice Margaret L. Workman

Justice Robin J. Davis

Justice Menis E. Ketchum

Justice Thomas E. McHugh

Justice Brent D. Benjamin Disqualified