

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

September 14, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

DIANE S. LOVAS, Petitioner

vs.) **No. 11-0288** (BOR Appeal No. 2045086)
(Claim No. 990025795)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
CONSOLIDATION COAL COMPANY, Respondent**

MEMORANDUM DECISION

Petitioner Diane S. Lovas, by M. Jane Glauser, her attorney, appeals the West Virginia Workers' Compensation Board of Review's Order denying a request to reopen the claim for an additional permanent partial disability award. Consolidation Coal Company, by Edward M. George III, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated January 14, 2011, in which the Board affirmed an August 30, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's February 19, 2010, decision denying a request to reopen the claim for an additional permanent partial disability award. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

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.

Ms. Lovas was working for Consolidation Coal Company when she injured her neck and head on August 25, 1998. She received a permanent partial disability award for her injuries on November 22, 1999. She filed a request for an additional permanent partial disability award on

February 9, 2010. The claims administrator denied the request on February 19, 2010, finding the request was time barred.

The Office of Judges concluded that pursuant to West Virginia Code § 23-4-16(a)(2) (2005), the request for an additional permanent partial disability award was time barred. On appeal, Ms. Lovas argues that the claim was reopened in 2002 for an additional permanent partial disability award, but permanent partial disability in relation to dysphagia has never been evaluated or litigated. She maintains that she is entitled to an evaluation and an additional permanent partial disability award due to impairment caused by dysphagia. Consolidation Coal Company maintains that the request to reopen the claim for an additional permanent partial disability award is time barred.

In reaching the conclusion to affirm the claims administrator's Order denying the request to reopen the claim for a permanent partial disability award, the Office of Judges noted that Ms. Lovas's initial permanent partial disability award was received on November 22, 1999. Under West Virginia Code § 23-4-16(a)(2), a claimant may apply to reopen a claim for an additional permanent partial disability award, however "in any claim in which an award of permanent disability was made, any request must be made within five years of the date of the initial award." Thus, the Office of Judges found the request for an additional permanent partial disability award was properly denied. The Board of Review reached the same reasoned conclusion in its decision of January 14, 2011.

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 Board of Review Order is affirmed.

Affirmed.

ISSUED: September 14, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh