

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

October 2, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

WILLARD R. BROMFIELD, Petitioner

**vs.) No. 11-0336 (BOR Appeal No. 2044940)
(Claim No. 990069569)**

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
U. S. STEEL MINING COMPANY, LLC,
Respondent**

MEMORANDUM DECISION

Petitioner Willard R. Bromfield, by John Blair, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. U. S. Steel Mining Company, by Barney Frazier, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated January 25, 2011, in which the Board affirmed an August 18, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's July 7, 2008, denial of Mr. Bromfield's request for permanent total disability benefits. 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.

Mr. Bromfield was most recently employed as a plant mechanic with U.S. Steel Mining Company. Mr. Bromfield filed an application for permanent total disability benefits on June 5, 2003. On September 20, 2005, Mr. Wooton performed a functional capacity evaluation and found that Mr. Bromfield could perform at the sedentary physical demand level. On December 3, 2006, Mr. Williams performed a vocational rehabilitation evaluation and found that Mr.

Bromfield is not permanently and totally disabled, is capable of performing at the sedentary physical demand level, and that his work history shows that he has the capacity to learn skilled occupations. On June 16, 2008, the Permanent Total Disability Review Board stated in its final recommendation that Mr. Bromfield is able to engage in gainful employment at the sedentary physical demand level, and therefore recommended denying his application for permanent total disability benefits. On November 19, 2009, Ms. Westfall completed a permanent total disability rehabilitation evaluation report and found that Mr. Bromfield is functioning at the sedentary physical demand level.

In its Order affirming the claims administrator's July 7, 2008, decision, the Office of Judges held that based on a preponderance of the evidence, Mr. Bromfield is not permanently and totally disabled. Mr. Bromfield disputes this finding and asserts that he is unable to engage in substantial gainful employment.

Pursuant to West Virginia Code § 23-4-6(n)(2) (2005), in order to receive a permanent total disability award, a claimant must be unable to engage in substantial gainful employment. All functional capacity evaluations and rehabilitation evaluations indicate that Mr. Bromfield is capable of performing at the sedentary physical demand level. Additionally, the Permanent Total Disability Review Board found that Mr. Bromfield is not entitled to permanent total disability benefits because he is capable of performing at the sedentary physical demand level. The Board of Review reached the same reasoned conclusion in its decision of January 25, 2011. We agree 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: October 2, 2012

CONCURRED IN BY:

Justice Robin J. Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh

DISSENTING:

Chief Justice Menis E. Ketchum