

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

CHAD L. MAYNARD,
Claimant Below, Petitioner

vs.) No. 100778 (BOR Appeal No. 2043768)
(Claim No. 2005045283)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER,
Commissioner Below, Respondent

and

DILLARD SMITH CONSTRUCTION COMPANY,
Employer Below, Respondent

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated May 25, 2010, in which the Board affirmed an October 30, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's granting of an 8% permanent partial disability award on May 12, 2008. The appeal was timely filed by the petitioner, and the Insurance Commissioner filed a response. 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, the Court is of the opinion that this case is appropriate for consideration under the Revised Rules. Having considered the parties' submissions 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.

The Board of Review affirmed the granting of an 8% permanent partial disability award following Mr. Maynard's compensable injury to his neck, back, and hip. The award

FILED

July 19, 2011

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

was for Mr. Maynard's neck injury as no back or hip impairment was found by evaluating physician Dr. Paul Bachwitt. Mr. Maynard contests only the finding regarding his hip impairment. He argues that he is entitled to an additional 2% award based upon the findings of Dr. Clifford Carlson, who found 2% impairment for Mr. Maynard's hip injury.

The Office of Judges noted that Dr. Carlson was referring to Table 40 of the AMA *Guides*, which provides for 2% whole person impairment for hip abduction in the range of 15 to 25 degrees. (Oct. 30, 2009 Office of Judges Order, p. 4.) Dr. Carlson, however, found an abduction of 35 degrees. *Id.* Thus, the 2% impairment rating was erroneously given, and no impairment is awarded for abduction that is 35 degrees. *Id.* Accordingly, the Office of Judges found that Mr. Maynard has 0% impairment for the right hip and 8% whole person impairment resulting from his neck injury. The Board of Review reached the same reasoned conclusion in its decision of May 25, 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 based upon the Board's material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the granting of an 8% permanent partial disability award is affirmed.

Affirmed.

ISSUED: July 19, 2011

CONCURRED IN BY:

Chief Justice Margaret Workman

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Menis E. Ketchum

Justice Thomas E. McHugh