

**STATE OF WEST VIRGINIA**

**SUPREME COURT OF APPEALS**

**FILED**

**GEORGE T. MAYNARD,  
Claimant Below, Petitioner**

**August 2, 2011  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA**

**vs.) No. 101083 (BOR Appeal No. 2044138)  
(Claim No. 2002059682)**

**WEST VIRGINIA OFFICE OF  
INSURANCE COMMISSIONER  
Commissioner Below, Respondent**

**and**

**APOGEE COAL CO. ARCH WV,  
Employer, Respondent**

**MEMORANDUM DECISION**

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated August 10, 2010, in which the Board affirmed an February 16, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the Claims Administrator's November 6, 2008, order refusing to grant an additional permanent partial disability award. The appeal was timely filed by the petitioner and a response was filed by the OIC. 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.

The Office of Judges held the claimant had been fully compensated by the previous 17% award for permanent partial disability. Mr. Maynard argues that Dr. Guberman's report is not entitled to greater weight. He further argues that because there were no problems with Dr. Carlson's report, the reports were entitled to equal weight and the report consistent with his position must be adopted.

There were multiple physician reports submitted for consideration and the Office of Judges discussed each thoroughly. Mr. Maynard relies upon Dr. Carlson's May 5, 2008 report which recommended a 31% whole person impairment but did not note whether the previous award was considered in his findings. The Commission submitted the March 1, 2004 report of Dr. Mir, which recommended a 17% whole person impairment and was relied upon by the Office of Judges in the original permanent partial disability award. A July 21, 2008 report by Dr. Guberman was submitted by the Commission finding only a 10% whole person impairment and recommending the Petitioner had already been fully compensated. A September 22, 2009 report by Dr. Bachwitt was also submitted by the Commission which found only a 3% net impairment.

The Office of Judges, in finding the Petitioner had been previously fully compensated, found Dr. Guberman's report to be the most reliable. (February 16, 2010 Office of Judges Order, p. 5). The Office of Judges compared each of the reports and found Dr. Guberman's to be the most clear and concise. *Id.* It further noted that awards for permanent partial disability are for permanent impairment, emphasizing the significant improvement from the time of Dr. Carlson's report. *Id.* at p. 7. The Board of Review reached the same reasoned conclusions in affirming the Office of Judges in its decision of August 10, 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 denial of the petitioner's request for an additional permanent partial disability award is affirmed.

Affirmed.

ISSUED: August 2, 2011

CONCURRED IN BY:

Chief Justice Margaret Workman

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Menis E. Ketchum

Justice Thomas E. McHugh