

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

**Samuel Robert Canada II,
Claimant Below, Petitioner**

August 3, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

**vs.) No. 101106 (BOR Appeal No. 2044112)
(Claim No. 2000048836)**

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

and

**Mountain Energy, LLC,
Employer Below, Respondent**

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated August 17, 2010, in which the Board affirmed a February 4, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's January 26, 2009 decision granting Mr. Canada a 10% PPD award.

The appeal was timely filed by the petitioner and a response was filed by the West Virginia Office of Insurance Commissioner. 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 Board of Review affirmed the Office of Judges' conclusion that Dr. Ramanathan Padmanaban's report was entitled to greater weight than Dr. Clifford Carlson's April 22, 2008 report. Mr. Canada disputes this finding and asserts that "no credible nor specifically identifiable reasoning has been pointed to" demonstrating why Dr. Padmanaban's report was given more evidentiary weight than Dr. Carlson's.

The Board of Review specifically noted that the difference between the reports of Dr. Padmanaban and Dr. Carlson was that Dr. Padmanaban did not find ligament laxity in Mr. Canada's knees, while Dr. Carlson did. The Board of Review also noted that Mr. Canada's treating physician, Dr. Zahir, did not identify the presence of ligament laxity, that Mr. Canada's MRI and x-rays did not indicate any ligament laxity, and that the numerous orthopedic surgeons who examined Mr. Canada could not identify any ligamentous laxity.

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 8% permanent partial disability award is affirmed.

Affirmed.

ISSUED: August 3, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Thomas E. McHugh

DISSENTING:

Justice Menis E. Ketchum