

**STATE OF WEST VIRGINIA**

**SUPREME COURT OF APPEALS**

**FILED**

January 19, 2012  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

**DANNY L. BOYLES, Petitioner**

**vs.) No. 101172 (BOR Appeal No. 2044180)  
(Claim No. 2006025762)**

**WEST VIRGINIA OFFICE OF  
INSURANCE COMMISSIONER  
and TURN 4 TRUCK & AUTO, INC., Respondent**

**MEMORANDUM DECISION**

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated August 19, 2010, in which the Board reversed a February 25, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the Claims Administrator's October 2, 2007, Order granting petitioner a 12% permanent partial disability award for bilateral carpal tunnel syndrome. The appeal was timely filed by the petitioner and a response was filed by the Employer. 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 briefs, and the record presented, the Court finds that a memorandum decision is appropriate under Rule 21 of the Revised Rules.

The petitioner was diagnosed with bilateral carpal tunnel syndrome. Dr. Kropac evaluated the petitioner and found the petitioner suffered from a 12% impairment as a result of carpal tunnel syndrome and lesion of the ulnar nerve in accordance with W. Va. C.S.R. § 85-20-64.5 (2004). The Claims Administrator granted the petitioner a 12% permanent partial disability award, with 6% attributable to bilateral carpal tunnel syndrome.

The Office of Judges reversed the Claims Administrator's Order and found there was sufficient evidence to grant a 16% permanent partial disability award. The Office of Judges found, according to Dr. Guberman's report, that under Table 16 of the American Medical Association's, *Guides to Evaluation of Permanent Impairment* (4<sup>th</sup> ed. 1993) the petitioner was entitled to a 6% award for carpal tunnel for each hand and an additional 4% for ulnar entrapment.

The Board of Review reversed the Office of Judges' Order and reinstated the Claims Administrator's original award of 12%. The Board of Review found Dr. Kropac's report to be relevant, credible, material, and reliable, noting that Dr. Guberman's impairment rating was excessive given the petitioner suffered from mild carpal tunnel syndrome.

In *Davies v. West Virginia Office of Ins. Com'r*, 708 S.E.2d 524, 227 W.Va. 330 (W. Va. 2011), this Court held that W. Va. C.S.R. § 85-20-64.5 (2004) was invalid as it applied to Table 16 of the American Medical Association's, *Guides to Evaluation of Permanent Impairment*, at 57 (4<sup>th</sup> ed. 1993). Dr. Guberman assessed petitioner's carpal tunnel under Table 16. Additionally, the Office of Judges noted that Dr. Kropac failed to apply the AMA *Guides* to his assessment of carpal tunnel syndrome, as is required by W. Va. C.S.R. § 85-20-64.1. (February 25, 2010, Office of Judges Order, p. 5).

For the foregoing reasons, we find that the decision of the Board of Review is clearly the result of erroneous conclusions of law. Therefore, in light of this Court's holding in *Davies*, this appeal is remanded to the Office of Judges for further development of the evidence.

Reverse and Remand.

**ISSUED: January 19, 2012**

**CONCURRED IN BY:**

Chief Justice Menis E. Ketchum  
Justice Margaret L. Workman  
Justice Thomas E. McHugh

**DISSENTING:**

Justice Robin J. Davis  
Justice Brent D. Benjamin