

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

CONSOLIDATION COAL COMPANY, Petitioner

February 17, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 101385 (BOR Appeal No. 2044151)
(Claim No. 2000026964)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
JAMES D. WHITE, Respondent**

MEMORANDUM DECISION

Petitioner Consolidation Coal Company, by Timothy Huffman, its attorney, appeals the decision of the Board of Review. Respondent James D. White is represented by his attorney, William Talty, and did not file a response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated September 29, 2010, in which the Board affirmed a February 12, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the claims administrator's March 17, 2008, decision to grant Mr. White no additional permanent partial disability benefits on a psychiatric basis. 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 affirming the Office of Judges' decision, the Board of Review held that the preponderance of the evidence established that Mr. White is entitled to a total permanent

partial disability award of 14% for his psychiatric condition. Mr. White's employer, Consolidation Coal Company, disputes this finding and asserts that improper weight was placed on Mr. White's Global Assessment of Functioning (GAF) scores by the Office of Judges.

The Board of Review found that the weight of the evidence placed Mr. White in Class 3 of W. Va. Code R. § 85-20 Exhibit B (2006), which includes an impairment rating of 6% to 14% and GAF scores from 51 to 60. The Board of Review found that Mr. White was initially granted an 8% psychiatric permanent partial disability award, and that at the time of the 8% award, Mr. White's GAF score was 60. The Board of Review further found that following this award, Mr. White successfully reopened his claim after suffering a progression of his condition. The Board of Review found that the preponderance of the evidence indicated that Mr. White's GAF score is now between 50 and 55, and that the Office of Judges' award of 14% permanent partial disability for psychiatric impairment was not clearly wrong.

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 decision of the Board of Review is affirmed.

Affirmed.

ISSUED: February 17, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh