

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

MCELROY COAL COMPANY, Petitioner

March 29, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 101453 (BOR Appeal No. 2044482)
(Claim No. 2002060911)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
JOHN J. STABILE, Respondent

MEMORANDUM DECISION

Petitioner, McElroy Coal Company, by Edward M. George III, its attorney, appeals the Board of Review order granting Mr. Stabile a 12% permanent partial disability award for carpal tunnel syndrome. John J. Stabile, by Jonathan C. Bowman, his attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated October 25, 2010, in which the Board affirmed an April 27, 2010, order of the Workers' Compensation Office of Judges. In its order, the Office of Judges reversed the claims administrator's 0% permanent partial disability award and granted 12% permanent partial disability for carpal tunnel syndrome. 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, response, 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 held the preponderance of the evidence supports an award of 12% permanent partial disability for carpal tunnel syndrome. McElroy Coal Company asserts the preponderance of the evidence supports an award of 0% permanent partial disability. Dr. Joseph Grady, II evaluated Mr. Stabile and found 0% impairment from carpal tunnel syndrome. Dr. Paul Steinman also evaluated Mr. Stabile and opined 12% impairment for carpal tunnel syndrome. As a result, Mr. Stabile asserts the preponderance of the evidence preponderates in his favor and he was properly awarded 12% permanent partial disability for his carpal tunnel syndrome.

The Office of Judges held the “rather limited Record to be Considered supports the position of [Mr. Stabile] that he continues to suffer pain as a result of carpal tunnel syndrome even after surgery rather than an uneventful and totally successful surgical intervention as suggested by Dr. Grady.” It further held, “if one accepts the proposition that the treatment notes of Dr. Pecar, Mr. Stabile’s treating physician, support the report of Dr. Steinman, then the preponderance of credible medical evidence supports the finding that [Mr. Stabile] should be granted 12% permanent partial disability benefits based upon the Record to be Considered.” Since the evidence does not preponderate in favor of either party, it held West Virginia Code § 23-4-1g (2003), the position of Mr. Stabile, by operation of law, must be adopted. The Board of Review reached the same reasoned conclusions in affirming the Office of Judges in its decision of October 25, 2010.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of any constitutional or statutory provisions, is not so clearly the result of erroneous conclusions of law, nor is it so clearly wrong based upon the evidentiary record that even when all inferences are resolved in favor of the board’s findings, reasoning, and conclusions, there is insufficient support to sustain the decision. Therefore, the denial of McElroy Coal Company’s request for reversal of the 12% permanent partial disability award is affirmed.

Affirmed.

ISSUED: March 29, 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