

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

ROBERT W. TAYLOR, Petitioner

March 22, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 101459 (BOR Appeal No. 2044537)
(Claim No. 2006030823)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
UNITED DAIRY, INC., Respondent

MEMORANDUM DECISION

Petitioner Robert W. Taylor, by Samuel Hanna, his attorney, appeals the West Virginia Workers' Compensation Board of Review's Order denying an additional permanent partial disability award. United Dairy, Inc., by Brad Crouser, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated October 12, 2010, in which the Board affirmed an April 16, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the Claims Administrator's February 3, 2009, Order granting a 9% permanent partial disability award for his right shoulder injury. 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 Board of Review found the petitioner had been fully compensated by a 9% permanent partial disability award. The petitioner disagrees and asserts that according to the report by Dr. Summers, he is entitled to an additional 4% permanent partial disability award. There were three medical reports submitted on the issue. Dr. Mukkamala recommended a 9% whole person impairment based on range of motion findings. Dr. Summers recommended a 13% whole person impairment based on range of motion findings and motor weakness. Dr. Bachwitt recommended an

8% whole person impairment, but agreed that according to Dr. Mukkamala's report the petitioner was fully compensated by the 9% award.

The Office of Judges, in affirming the Claims Administrator's grant of a 9% permanent partial disability award, held that the preponderance of the evidence established the petitioner was not entitled to an additional 4% permanent partial disability award for his right shoulder injury. The Office of Judges found that the medical evidence demonstrated that the petitioner suffered from an 8-9% whole person impairment, not the 13% found by Dr. Summers. It noted that the reports of Drs. Mukkamala and Bachwitt were the most persuasive and convincing. The Board of Review reached the same reasoned conclusions as the Office of Judges in its decision of October 12, 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 provision, nor is it clearly the result of erroneous conclusions of law, nor is it based upon a material misstatement or mischaracterization of the evidentiary record. Therefore, the Board of Review Order is affirmed.

Affirmed.

ISSUED: March 22, 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