

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

JOHN E. MEADOWS, Petitioner

June 27, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) **No. 11-0112 (BOR Appeal No. 2044913)**
(Claim No. 2008048422)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
KWV OPERATIONS, LLC, Respondent**

MEMORANDUM DECISION

Petitioner John E. Meadows, by Paige Flanigan, his attorney, appeals the decision of the Board of Review. KWV Operations, LLC, by Patricia Jennings, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated December 20, 2010, in which the Board affirmed an August 4, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's February 4, 2009, decision holding that Mr. Meadows has been fully compensated by a prior 10% permanent partial disability award for occupational pneumoconiosis. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

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.

Mr. Meadows is employed as an underground coal miner with KWV Operations. On July 11, 2008, the claim was held compensable for occupational pneumoconiosis. On December 16, 2008, the Occupational Pneumoconiosis Board determined that Mr. Meadows suffers from no more than a 10% pulmonary function impairment attributable to occupational pneumoconiosis, and that he has been fully compensated through awards granted in two prior occupational pneumoconiosis claims. Dr. Rasmussen examined Mr. Meadows and found that he had at least a 20% loss of pulmonary

function as a result of occupational pneumoconiosis. At a May 19, 2010, Occupational Pneumoconiosis Board hearing, Dr. Kinder attributed 10% of Mr. Meadows's pulmonary function impairment to occupational pneumoconiosis and 10% to his longstanding history of cigarette smoking. Dr. Kinder also noted that there was minimal x-ray evidence of occupational pneumoconiosis.

In its Order affirming the claims administrator's decision, the Office of Judges held that based on the evidence of record Mr. Meadows is not entitled to greater than a 10% permanent partial disability award for occupational pneumoconiosis, that he has been fully compensated by a prior 10% permanent partial disability award, and that the conclusions of the Occupational Pneumoconiosis Board were not clearly wrong. Mr. Meadows disputes these findings and asserts, per the opinion of Dr. Rasmussen, that he is entitled to a total of a 20-25% permanent partial disability award for occupational pneumoconiosis.

In its Order, the Office of Judges found that the report of Dr. Rasmussen was not persuasive and did not establish that the majority of Mr. Meadows's impairment is attributable to occupational pneumoconiosis. The Office of Judges further found that Dr. Rasmussen's findings were not substantiated by the Occupational Pneumoconiosis Board, who only found evidence of mild occupational pneumoconiosis. West Virginia Code § 23-4-6a (2005) provides that the Office of Judges "shall affirm the decision of the Occupational Pneumoconiosis Board made following [a] hearing unless the decision is clearly wrong in view of the reliable, probative and substantial evidence on the whole record." The Board of Review reached the same reasoned conclusions in its decision of December 20, 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 decision of the Board of Review is affirmed.

Affirmed.

ISSUED: June 27, 2012

CONCURRED IN BY:

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh

DISSENTING:

Chief Justice Menis E. Ketchum