

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

CASSIDY DALE LESTER, Petitioner

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

vs.) No. 11-0114 (BOR Appeal No. 2044806)
(Claim No. 2002027141)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
U. S. STEEL MINING COMPANY, Respondent

MEMORANDUM DECISION

Petitioner Cassidy Dale Lester, by John Blair, his attorney, appeals the decision of the Board of Review. U. S. Steel Mining Company, by Barney Frazier, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated December 22, 2010, in which the Board affirmed a June 29, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the claims administrator's November 13, 2007, decision granting Mr. Lester a 4% psychiatric permanent partial disability award. 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. Lester was employed as an underground coal miner with U. S. Steel Mining Company. On October 25, 2001, he injured his left hand and lumbar spine when he tripped and fell inside a coal mine. Mr. Lester received an 8% permanent partial disability award attributable to the injuries to his lumbar spine. He has undergone three psychiatric independent medical examinations in order to assess the amount of psychiatric impairment resulting from the lumbar spine injury.

On August 13, 2003, Dr. Shah recommended a 4% psychiatric permanent partial disability award for depressive disorder and anxiety disorder stemming from the October 25, 2001, lumbar spine injury. On April 2, 2009, Dr. Riaz recommended a 10% psychiatric permanent partial disability award. On December 21, 2009, Dr. Smith recommended a 5% psychiatric permanent partial disability award for major depression stemming from the October 25, 2001, lumbar spine injury. As noted by the Office of Judges, the October 27, 2009, deposition of Dr. Riaz was introduced outside Mr. Lester's July 11, 2009, deadline to introduce evidence and therefore was not considered.

In its Order reversing the claims administrator's November 13, 2007, decision, the Office of Judges held that Mr. Lester is entitled to a 5% psychiatric permanent partial disability award in accordance with the report of Dr. Smith. Mr. Lester disputes this finding and asserts, per the opinion of Dr. Riaz, that he is entitled to an additional 5% psychiatric permanent partial disability award, for a total psychiatric permanent partial disability award of 10%.

The Office of Judges found that in addition to psychiatric impairment related to depression stemming from the October 25, 2001, lumbar spine injury, Mr. Lester was subject to additional personal factors that would increase the amount of his psychiatric impairment. The Office of Judges then found that Dr. Smith's report recommending a 5% psychiatric permanent partial disability award best accounted for these personal factors. The Board of Review reached the same reasoned conclusion in its decision of December 22, 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:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh