

**STATE OF WEST VIRGINIA**

**SUPREME COURT OF APPEALS**

**FILED**

March 6, 2013

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

**RONALD ADKINS,  
Claimant Below, Petitioner**

vs.) **No. 11-0787** (BOR Appeal No. 2045333)  
(Claim No. 960017089)

**WEST VIRGINIA OFFICE OF  
INSURANCE COMMISSIONER  
Commissioner Below, Respondent**

**and**

**COW CREEK COAL COMPANY,  
Employer Below, Respondent**

**MEMORANDUM DECISION**

Petitioner Ronald Adkins, by John Blair, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. The West Virginia Office of Insurance Commissioner, by Jon Snyder, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated April 18, 2011, in which the Board affirmed a November 17, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's March 27, 2009, decision denying further consideration of Mr. Adkins's request for permanent total disability benefits because he did not meet the necessary statutory threshold. The Court has carefully reviewed the records, written arguments, and appendices contained in the briefs, and the case is mature for consideration.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Rules of Appellate Procedure.

Mr. Adkins was most recently employed as a scoop operator with Cow Creek Coal Company. He filed an application for permanent total disability benefits on June 11, 2003. Mr. Adkins has undergone multiple independent medical evaluations in order to determine the amount of permanent impairment attributable to his compensable injuries. On June 14, 2000, Dr. Shah recommended a 12% psychiatric permanent partial disability award, and on October 7, 2002, Dr. Faheem recommended a 15% psychiatric permanent partial disability award. On May 13, 2003, Dr. Grady recommended a 16% permanent partial disability award for the cervical spine, a 4% permanent partial disability award for the thoracic spine, and a 14% permanent partial disability award for the lumbar spine. Dr. Weise recommended a 5% psychiatric permanent partial disability award on July 10, 2007. On March 19, 2009, the Permanent Total Disability Review Board stated in its final recommendations that Mr. Adkins failed to meet the whole person impairment threshold required for further consideration of permanent total disability benefits pursuant to West Virginia Code § 23-4-6(n)(1) (1999). The Permanent Total Disability Review Board found that the evaluations by Drs. Grady and Weise presented the most accurate assessment of the amount of Mr. Adkins's whole person impairment. The Permanent Total Disability Review Board then found that Mr. Adkins suffered a total whole person impairment of 34%. On November 9, 2009, Dr. Poletajev examined Mr. Adkins and recommended a permanent partial disability award of 49% for his back, shoulder, and psychiatric problems. Dr. Poletajev also found Mr. Adkins to be permanently and totally disabled. On May 19, 2010, Dr. Bachwitt recommended a 31% permanent partial disability award for injuries to Mr. Adkins's back and shoulder.

In its Order affirming the claims administrator's March 27, 2009, decision, the Office of Judges held that Mr. Adkins failed to meet the statutory threshold necessary for further consideration of permanent total disability benefits. Mr. Adkins disputes this finding and asserts that the evidence of record demonstrates that he is permanently and totally disabled.

The Office of Judges noted that only Dr. Poletajev, a chiropractor, found that Mr. Adkins met the statutory threshold. The Office of Judges then found that Dr. Poletajev's opinion is entitled to less weight than the opinions of Drs. Grady and Bachwitt. The Office of Judges further found that Dr. Poletajev overestimated the amount of Mr. Adkins's lumbar spine impairment, and noted that Dr. Poletajev was the only physician of record to find significant lumbar radiculopathy. Additionally, the Office of Judges found that Dr. Weise's psychiatric permanent impairment recommendation is the most recent and persuasive, and that Dr. Poletajev's opinion as a chiropractor is not reliable with regard to psychiatric issues. The Board of Review reached the same reasoned conclusions in its decision of April 18, 2011. We agree with the reasoning and conclusions of the Board of Review.

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: March 6, 2013**

**CONCURRED IN BY:**

Chief Justice Brent D. Benjamin

Justice Robin J. Davis

Justice Margaret L. Workman

Justice Menis E. Ketchum

Justice Allen H. Loughry II