

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

June 11, 2014

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

ROBERT L. LEWIS,
Claimant Below, Petitioner

vs.) **No. 12-0354** (BOR Appeal No. 2046204)
(Claim No. 2009088934)

LAUREL COAL CORPORATION,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Robert L. Lewis, by Robert Williams, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Laurel Coal Corporation, by Timothy Huffman, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated February 17, 2012, in which the Board affirmed a July 6, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's December 29, 2009, decision which granted no additional permanent partial disability award for Mr. Lewis's lower back injury. 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. Lewis injured his lower back while working for Laurel Coal Corporation on April 23, 2009. He previously injured his lower back and received a 13% permanent partial disability award in the earlier claim. Based on a report by Anbu Nadar, M.D., the claims administrator granted Mr. Lewis a 0% permanent partial disability award for the lower back injury.

The Office of Judges affirmed the claims administrator's decision, and held that Mr. Lewis is not entitled to an additional permanent partial disability award, because he was fully

compensated by the prior 13% award. On appeal, Mr. Lewis asserts that he is entitled to a 10% additional permanent partial disability award per the report of Bruce Guberman, M.D. Laurel Coal Corporation maintains that he has been fully compensated by the prior award. On July 28, 2010, Dr. Guberman found that despite the previous 13% permanent partial disability award for the lower back, under West Virginia Code of State Rules § 85-20-Table C (2006), Mr. Lewis was entitled to a 10% permanent partial disability award in this claim. Prasadarao Mukkamala, M.D., disagreed on September 2, 2010, and found that Mr. Lewis was fully compensated for his impairment in the lower back by the prior permanent partial disability award.

In affirming the claims administrator's decision, the Office of Judges found that the preponderance of the evidence did not establish that Mr. Lewis was entitled to an additional permanent partial disability award for the lower back. It noted that Dr. Guberman's method essentially allows Mr. Lewis to double dip when he was fully compensated by a prior award. The Office of Judges held that the reports of Drs. Mukkamala and Nadar were reliable. The Board of Review reached the same reasoned conclusions in its decision of February 17, 2012. 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: June 11, 2014

CONCURRED IN BY:

Chief Justice Robin J. Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Menis E. Ketchum
Justice Allen H. Loughry II