

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

January 14, 2014

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

DONNIE C. EVANS,
Claimant Below, Petitioner

vs.) **No. 12-0518** (BOR Appeal No. 2046500)
(Claim No. 990038132)

CONSOLIDATION COAL COMPANY,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Donnie C. Evans, by Robert L. Stultz, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Consolidation Coal Company, by Alyssa A. Sloan, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated March 26, 2012, in which the Board affirmed an October 5, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's November 25, 2009, decision denying a permanent total disability award. 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. Evans worked as a miner for Consolidation Coal Company. During his employment he suffered several neck injuries, the last of which occurred on November 12, 1998, when he struck his head while going through a low door. Mr. Evans applied for permanent total disability benefits based on this injury. Mr. Evans's application was supported by the independent medical evaluation of Dr. Snead who found that Mr. Evans was unable to engage in substantial, economically gainful activity. The Interdisciplinary Examining Board determined that Mr. Evans did not have enough permanent partial disability awards to meet the statutory threshold. The

decision was affirmed by the Office of Judges and the Board of Review. But this Court reversed the Board of Review on June 15, 2006. This Court found that Mr. Evans had met the threshold for permanent total disability consideration and remanded the case for a determination of Mr. Evans's entitlement for an award. On remand, the claims administrator denied Mr. Evans's application for permanent total disability. Following this denial, Mr. Evans was evaluated by Erin Saniga for vocational rehabilitation. Ms. Saniga found that Mr. Evans's employment opportunities would be greatly improved by basic computer training. Ms. Saniga also identified several possible positions within a seventy-five mile area that would be suitable for Mr. Evans. On October 5, 2011, the Office of Judges affirmed the claims administrator's decision. The Board of Review then affirmed the Order of the Office of Judges on March 26, 2012, leading Mr. Evans to appeal.

The Office of Judges concluded that Mr. Evans was not permanently and totally disabled. The Office of Judges concluded that the evidence did not support granting a permanent total disability award because Mr. Evans could at least do light and sedentary work with possible medium capacity lifting requirements. The Office of Judges found that minimally intensive computer training would greatly enhance Mr. Evans's employability. The Office of Judges found that the main reason that Mr. Evans was unemployable was due to his hip replacement which was not a compensable injury. The Office of Judges also found that Mr. Evans was not in the job market because of his age, which could not be the lone basis for a permanent total disability award. The Board of Review adopted the findings of the Office of Judges and affirmed its Order.

We agree with the conclusions of the Board of Review and the findings of the Office of Judges. Mr. Evans is not permanently and totally disabled from his compensable injuries such that he is not able to engage in substantial gainful activity. The evidence in the record shows that Mr. Evans has transferable skills and is capable of greatly improving his employment opportunities with a minimum amount of basic computer training. Ms. Saniga's vocational report shows that Mr. Evans could perform at least light and sedentary work and that there are available jobs within his geographic area.

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: January 14, 2014

CONCURRED IN BY:

Chief Justice Robin J. Davis
Justice Margaret L. Workman
Justice Allen H. Loughry II

DISSENTING:

Justice Menis E. Ketchum

Justice Brent D. Benjamin, not participating