

**STATE OF WEST VIRGINIA**

**SUPREME COURT OF APPEALS**

**FILED**

June 27, 2014

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

**JOSHUA TRAUTMANN,  
Claimant Below, Petitioner**

vs.) **No. 13-0518** (BOR Appeal No. 2047838)  
(Claim No. 2007232023)

**FIRST PRESBYTERIAN CHURCH, BLUEFIELD,  
Employer Below, Respondent**

**MEMORANDUM DECISION**

Petitioner Joshua Trautmann, by Gregory S. Prudich, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. First Presbyterian Church, Bluefield, by Marion E. Ray, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated April 24, 2013, in which the Board affirmed an October 31, 2012, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's August 2, 2011, decision granting Mr. Trautmann a 4% permanent partial 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. Trautmann worked as a director of children and youth for First Presbyterian Church, Bluefield. On June 3, 2007, he was picking up a child when his right knee gave out. The claims administrator held the claim compensable. After a course of treatment, including an arthroscopic surgery, Charles Bonner, M.D., performed an independent medical evaluation on Mr. Trautmann. Dr. Bonner determined that Mr. Trautmann had 4% whole person impairment for range of motion deficits under the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993). He also determined that Mr. Trautmann had 4%

impairment for atrophy of the knee. However, Dr. Bonner found that the American Medical Association's *Guides* discouraged the combination of impairment ratings calculated under both methods. Dr. Bonner, therefore, found that Mr. Trautmann had 4% whole person impairment rated to his compensable knee injury. Bruce A. Guberman, M.D., then evaluated Mr. Trautmann and found that he had 8% whole person impairment related to his knee injury. Dr. Guberman based this rating on finding 1% impairment for Mr. Trautmann's partial meniscus tear and 7% impairment for his moderate cruciate ligament laxity. Rebecca Thaxton, M.D., then reviewed Mr. Trautmann's medical records and agreed with Dr. Bonner's impairment calculation. Randall Short, D.O., also reviewed Mr. Trautmann's records. He disagreed with Dr. Guberman's impairment calculation because Mr. Trautmann's anterior cruciate ligament was not a compensable condition of the claim. On August 2, 2011, the claims administrator granted Mr. Trautmann a 4% permanent partial disability award for the right knee. Following this award of permanent partial disability, Paul Bachwitt, M.D., issued a report in which he noted that Mr. Trautmann recently had an anterior cruciate ligament (ACL) reconstruction surgery. However, Dr. Bachwitt determined that the surgery was not related to a compensable condition of the claim. On October 31, 2012, the Office of Judges affirmed the claims administrator's decision. The Board of Review adopted the findings of the Office of Judges on April 24, 2013, leading Mr. Trautmann to appeal.

The Office of Judges concluded that Mr. Trautmann had 4% whole person impairment as a result of his June 3, 2007, injury. The Office of Judges also concluded that Mr. Trautmann's ACL reconstruction surgery should not be the basis of any impairment percentage under this claim. The Office of Judges found that Dr. Bonner correctly elected not to combine his impairment ratings for range of motion deficits with his impairment rating for atrophy. The Office of Judges also found that Dr. Bonner's opinion was supported by Dr. Short and Dr. Thaxton. The Office of Judges considered the opinion of Dr. Guberman, but it found that he incorrectly included Mr. Trautmann's ACL condition in his impairment calculation. The Office of Judges determined that Mr. Trautman's ACL tear had been specifically denied as a compensable condition of the claim. 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. Trautmann has not demonstrated that he is entitled to any greater than a 4% permanent partial disability award. Dr. Bonner recommended that Mr. Trautmann receive a 4% permanent partial disability award for his knee injury. His evaluation was sufficiently thorough, his recommendation is supported by the evidence in the record, and the Office of Judges was within its discretion in relying on his opinion. The Office of Judges was also justified in not basing its determination of Mr. Trautmann's permanent partial disability award on Dr. Guberman's opinion because his calculation would have provided Mr. Trautmann with an award for a non-compensable condition.

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, 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