

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Samuel Goodson,
Claimant Below, Petitioner

vs.) No. 21-0781 (BOR Appeal No. 2056571)
(Claim No. 2015009094)

Fayette County Board of Education,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Samuel Goodson appeals the decision of the West Virginia Workers' Compensation Board of Review ("Board of Review"). Fayette County Board of Education filed a timely response.¹ The issue on appeal is permanent partial disability. The claims administrator granted no additional permanent partial disability award on January 8, 2020. The Workers' Compensation Office of Judges ("Office of Judges") affirmed the decision in its March 30, 2021, Order. The Order was affirmed by the Board of Review on September 17, 2021. Upon our review, we determine that oral argument is unnecessary and that a memorandum decision affirming the Board of Review's decision is appropriate. *See* W. Va. R. App. P. 21.

Mr. Goodson, a custodian, injured his right knee when he fell while cleaning under bleachers at work on September 20, 2014. Treatment notes indicate he had a history of right knee pain. Robert Walker, M.D., performed an independent medical evaluation on October 16, 2015, in which he assessed 8% impairment per Table 41 of the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, (4th ed. 1993) ("AMA Guides"). He apportioned 4% for chronic, advanced chondromalacia of the patella and cartilage osseous erosions of the medial femoral condyle as seen on an MRI. He therefore found 4% impairment for the compensable injury. Mr. Goodson was granted a 4% permanent partial disability award on October 20, 2015.

The claims administrator added sprain/strain to unspecified site of the knee/leg; right quad muscle, fascia, and tendon injury; and synovial cyst in the popliteal space of the right knee to the claim. On April 21, 2016, Prasadarao Mukkamala, M.D., performed an independent medical evaluation in which he diagnosed right knee sprain and osteoarthritis. Using Table 41 of the AMA *Guides*, Dr. Mukkamala assessed 4% impairment for the compensable injury and declined to apportion for preexisting impairment. On November 14, 2016, the Office of Judges reversed the

¹Petitioner, Mr. Goodson, is represented by Reginald D. Henry, and respondent, Fayette County Board of Education is represented by Jillian L. Moore and Steven K. Wellman.

claims administrator's grant of a 4% permanent partial disability award and instead granted an 8% award.

Bruce Guberman, M.D., performed an independent medical evaluation on July 24, 2019, in which he diagnosed chronic post-traumatic right knee sprain. Using the *AMA Guides*, Dr. Guberman assessed 14% whole person impairment, which was 6% greater than the permanent partial disability award granted to Mr. Goodson. He noted that Mr. Goodson's right knee flexion contracture had worsened since his last evaluation, which qualifies him for additional impairment.

On August 22, 2019, Rebecca Thaxton performed a Record Review in which she opined that the additional 6% impairment found by Dr. Guberman was not the result of the compensable injury. She noted that Dr. Guberman did not explain how Mr. Goodson's increased impairment was the result of the compensable injury. Dr. Thaxton stated that he has a history of severe bilateral osteoarthritis and a body mass index above seventy. She noted that men with a body mass index between thirty and thirty-five have a fivefold increase in the development of osteoarthritis and that chronic degenerative disease is progressive in nature. Dr. Thaxton concluded that though Mr. Goodson's symptoms may have worsened, it is not the result of the work injury.

Dr. Guberman completed a supplemental report on October 1, 2019, in which he opined that Mr. Goodson's condition worsened due to continuation of his job, which involves standing and walking on a hard surface. Dr. Guberman also asserted that the 14% impairment found in his July 24, 2019, evaluation is the direct result of a progression of the work-related injury. He stated that his finding was supported by objective medical evidence. Specifically, at the time of his first evaluation, Mr. Goodson had two centimeters of right thigh atrophy but at the second evaluation, it had increased to three.

Dr. Mukkamala performed a second independent medical evaluation on December 26, 2019, in which he opined that Mr. Goodson's morbid obesity was a significant contributing factor to his right knee arthrosis and ongoing symptoms. He noted that Mr. Goodson had range of motion limitation in both knees. Dr. Mukkamala assessed 4% impairment using Table 41 of the *AMA Guides*. He opined that the 4% impairment should be apportioned for preexisting conditions but declined to do so because Mr. Goodson already received an 8% impairment award. Dr. Mukkamala further opined that the 14% impairment found by Dr. Guberman was based on erroneous findings.

On November 5, 2020, Marsha Lee Bailey, M.D., performed an independent medical evaluation in which she opined that Mr. Goodson's current complaints of severe bilateral knee pain, end-stage osteoarthritis, and degenerative joint disease were unrelated to the compensable injury. Dr. Bailey noted that muscle atrophy could not be used to determine his impairment due to significant left lower extremity swelling resulting from unrelated venous disease. Using the *AMA Guides*, Dr. Bailey assessed 4% impairment. She noted that Mr. Goodson had nearly identical range of motion abnormalities in the uninjured left knee and opined that it was related to an underlying condition which also affected the right knee. She therefore apportioned the entire 4% for preexisting conditions. Dr. Bailey stated that Dr. Guberman's finding of 14% impairment was incorrect because he failed to apportion for Mr. Goodson's longstanding morbid obesity and preexisting, severe, end-stage degenerative joint disease and osteoarthritis.

By order entered on March 30, 2021, the Office of Judges affirmed the claims administrator's order of March 30, 2021, granting no additional permanent partial disability award. The claimant argued before the Office of Judges that he is entitled to an additional 6% permanent partial disability award based on the findings of Dr. Guberman. The Office of Judges found that a comparison of Dr. Guberman's right knee range of motion findings on March 8, 2016, and July 24, 2019, does not show sufficient progression in impairment to warrant an additional 6% award. The Office of Judges found that comparison of the range of motion in the uninjured left knee showed much greater progression, supporting the finding that the right knee impairment is not related to the compensable injury.

The only difference the Office of Judges found in Dr. Guberman's evaluations was a difference of one degree in flexion contracture. The Office of Judges noted that the current law of the case is that Mr. Goodson has 8% impairment for the compensable injury, based on Dr. Guberman's March 30, 2021, finding of twenty-one degrees in flexion contracture. The Office of Judges concluded that it would be a substantial subversion of its prior order to grant an additional 6% permanent partial disability for a mere one degree of range of motion difference. More importantly, the Office of Judges found that though the right knee flexion contracture increased by one degree, the uninjured left knee increased by five degrees, taking the impairment from the mild to moderate category. This indicates that Mr. Goodson's progression in impairment is likely not related to his compensable injury, but rather to his preexisting chronic degenerative disease, as opined by Dr. Thaxton.

This Court may not reweigh the evidentiary record, but must give deference to the findings, reasoning, and conclusions of the Board of Review, and when the Board's decision affirms prior rulings by both the Workers' Compensation Commission and the Office of Judges, we may reverse or modify that decision only if it is in clear violation of constitutional or statutory provisions, is clearly the result of erroneous conclusions of law, or is based upon a material misstatement or mischaracterization of the evidentiary record. *See* W. Va. Code § 23-5-15(c) & (d). We apply a de novo standard of review to questions of law. *See Justice v. West Virginia Office Insurance Commission*, 230 W. Va. 80, 83, 736 S.E.2d 80, 83 (2012).

After review, we agree with the reasoning and conclusions of the Office of Judges as affirmed by the Board of Review. Mr. Goodson has failed to show that he is entitled to a greater award than the 8% already granted to him. He relies on the report of Dr. Guberman, who assessed 14% impairment for the right knee based on an increase of one degree of flexion contracture. Such increase does not justify the 6% increase in impairment recommended by Dr. Guberman. Because Mr. Goodson has failed to provide sufficient evidence showing he is entitled to more than 8% impairment, the decision denying an additional permanent partial disability award is affirmed.

Affirmed.

ISSUED: June 13, 2023

CONCURRED IN BY:

Chief Justice Elizabeth D. Walker

Justice Tim Armstead

Justice John A. Hutchison

Justice William R. Wooton

Justice C. Haley Bunn