

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

SEAN HATCHER,
Claimant Below, Petitioner

vs.) No. 100639 (BOR Appeal No. 2043815)
(Claim No. 2008033601)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER,
Commissioner Below, Respondent

and

RAMEY AUTOMOTIVE GROUP, INC.,
Employer Below, Respondent

FILED

July 15, 2011

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

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated April 22, 2010, in which the Board affirmed a November 19, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's granting of a 7% permanent partial disability award on October 6, 2008. The appeal was timely filed by the petitioner, and Ramey Automotive Group, Inc. filed a response. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, the Court is of the opinion that this case is appropriate for consideration under the Revised Rules. Having considered the parties' submissions and the relevant decision of the lower tribunal, the Court is of the opinion that the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the Court determines that there is no prejudicial error. This case does not present a new or significant question of law. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

The Board of Review affirmed the granting of a 7% permanent partial disability award. Mr. Hatcher argued that he was entitled to a 20% award based upon the findings of

Chiropractor Michael J. Kominsky and Dr. Yogesh Chand. The Office of Judges disregarded these evaluators' recommended impairment ratings and instead relied on the recommended impairment ratings provided by Drs. Bruce A. Guberman and Prasadaroa B. Mukkamala, who each recommended a 7% impairment rating. The Office of Judges found Chiropractor Kominsky's and Dr. Chand's reports to be unreliable as "neither doctor correctly applied the Rule 20 requirements on spinal impairment by addressing the diagnostic criteria necessary for placement under a particular category. Dr. Chand did not even supply a lumbar spine Rule 20 rating." (Nov. 19, 2009 Office of Judges Order, p. 5.) Thus, the Office of Judges relied on the reports of Drs. Guberman and Mukkamala in affirming the 7% award. The Board of Review reached the same reasoned conclusion in affirming the Office of Judges in its decision of April 22, 2010.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of constitutional or statutory provision, clearly the result of erroneous conclusions of law, or is based upon the Board's material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the granting of a 7% permanent partial disability award is affirmed.

Affirmed.

ISSUED: July 15, 2011

CONCURRED IN BY:

Chief Justice Margaret Workman

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Menis E. Ketchum

Justice Thomas E. McHugh