

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

FILED

July 12, 2011

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

**Richard Lee Salyers,
Petitioner**

**vs.) No. 100707 (BOR Appeal No. 2043726)
(Claim No. 2008037403)**

**West Virginia Office Of
Insurance Commissioner, and
Frasure Creek Mining, LLC.,
Respondents**

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated May 10, 2010, in which the Board affirmed an October 21, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's granting of a 4% permanent partial disability award on October 10, 2008. The appeal was timely filed by the petitioner, and Frasure Creek Mining 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 petition 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 4% permanent partial disability award. Mr. Salyers had argued that he was entitled to an 18% award based upon the findings of Chiropractor Victor Poletajev. The Office of Judges disagreed with the opinion of Dr. Poletajev and stated that it could give little or no weight to his report for two reasons: First, the OOOJ relied upon Dr. Mukkamala's assessment that Dr. Poletajev misapplied the AMA

Guides. Second, it was believed that when combining the fact that Dr. Poletajev misapplied the Guides with the fact that the reports of Drs. Mukkamala and Nadar supported one another, little weight should be given to the Poletajev opinion. The OOH added that “[i]t is reasonable to conclude that the claimant was fully compensated by the 4% award of October 10, 2008. Thus, the issue has been resolved. . .” (10/21/09 OOH Order at p. 5). The Board of Review reached the same reasoned conclusion in affirming the OOH in its decision of May 10, 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 denial of the petitioner's request for an additional permanent partial disability award is affirmed.

Affirmed.

ISSUED: July 12, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Menis E. Ketchum
Justice Thomas E. McHugh