

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

TIMOTHY R. MORGAN,
Claimant Below, Petitioner

vs.) No. 100728 (BOR Appeal No. 2043898)
(Claim No. 2003021337)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER,
Commissioner Below, Respondent

and

U. S. STEEL MINING COMPANY, LLC,
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 May 25, 2010, in which the Board affirmed a December 8, 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 for impairment due to carpal tunnel syndrome in both hands on March 26, 2008. The appeal was timely filed by the petitioner, and U.S. Steel Mining Co., LLC 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 4% permanent partial disability award. Mr. Morgan argues that he is entitled to a 12% award based upon the recommendation of Dr. Cliff Hill. Mr. Morgan claims that Dr. Hill's recommendation was improperly given insufficient weight. The Office of Judges, however, found Dr. Hill's report to be "suspect." (Dec. 8, 2009 Office of Judges Order, p. 7.) The Office of Judges highlighted that, despite recommending the highest impairment rating possible for carpal tunnel syndrome, Dr. Hill acknowledged that Mr. Grew obtained an excellent result following his carpal tunnel release surgery. Further, Dr. Hill did not test less than 15 millimeters in administering a two point discrimination test. "As such, his sensory impairment rating can hardly be considered accurate or reliable." *Id.*

The Office of Judges found that Dr. P. B. Mukkamala, on the other hand, "has given an excellent examination." *Id.* It therefore utilized Dr. Mukkamala's recommendation in ordering that the total award of 4% permanent partial disability be affirmed. The Board of Review reached the same reasoned conclusion in its decision of May 25, 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 4% 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