

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

JAMES E. MAYNARD,
Claimant Below, Petitioner

vs.) No. 100758 (BOR Appeal No. 2043837)
(Claim No. 2007219765)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER,
Commissioner Below, Respondent

and

ROCKSPRING DEVELOPMENT, INC.,
Employer Below, Respondent

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 November 16, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the claims administrator's November 1, 2007 Order, which granted no permanent partial disability. The Office of Judges granted Mr. Maynard a 2% permanent partial disability award. The appeal was timely filed by the petitioner, and Rockspring Development, 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.

FILED

July 19, 2011

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

The Board of Review affirmed the granting of a 2% permanent partial disability award. Mr. Maynard argues that the Office of Judges incorrectly weighed the evidence in dismissing his evaluating physician's report simply because the physician, Dr. Clifford Carlson, found greater impairment than the other evaluating physicians. The Office of Judges, however, noted that Dr. Carlson was the only evaluating physician who believed that there was significant loss of cartilage interval in the right knee and right ankle. (Nov. 16, 2009 Office of Judges Order, p. 4.) The Office of Judges also noted that all physicians acknowledge that Mr. Maynard's right knee and right ankle degenerative changes precede the subject compensable injury. *Id.* Thus, the Office of Judges found no rational basis for Dr. Carlson's recommendation of 14% impairment, and it found that Dr. A. E. Landis's report, which recommended 2% impairment, to be the most persuasive in conjunction with Mr. Maynard's overall medical record. *Id.* 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 so clearly wrong based upon the evidentiary record that even when all inferences are resolved in favor of the board's findings, reasoning and conclusions, there is insufficient support to sustain the decision. Therefore, the granting of a 2% permanent partial disability award is affirmed.

Affirmed.

ISSUED: July 19, 2011

CONCURRED IN BY:

Chief Justice Margaret Workman

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Thomas E. McHugh

DISSENTING:

Justice Menis E. Ketchum