

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

JEFFREY STEVENS,
Claimant Below, Petitioner

vs.) No. 100871 (BOR Appeal No. 2044115)
(Claim No. 2008042961)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER,
Commissioner Below, Respondent

and

AUSTIN POWDER COMPANY,
Employer Below, Respondent

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated June 29, 2010, in which the Board affirmed a February 3, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's January 13, 2009 Order granting a 9% permanent partial disability award. The appeal was timely filed by the petitioner, and a response was filed by Austin Powder Company. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

Pursuant to Revised Rule 1(d), this matter should be, and hereby is, set for consideration under the Revised Rules of Appellate Procedure. 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 grant of a 9% permanent partial disability award. Mr. Stevens contends that Dr. Bruce A. Guberman's report, which found 16% impairment,

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June 9, 2011

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
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should have been accorded more evidentiary weight despite being in conflict with the other evaluating physicians' reports.

The Office of Judges reviewed the reports of the physicians who conducted independent medical evaluations: Dr. Anbu Nadar, Dr. Bruce A. Guberman, and Dr. Michael Condaras. (Feb. 3, 2010 Office of Judges Order, pps. 3-4.) All physicians found 7% impairment of Mr. Stevens's right knee; however, Dr. Guberman deviated substantially with respect to impairment found in Mr. Stevens's left hip and left foot / ankle. Both Drs. Nadar and Condaras found only 2% impairment of Mr. Stevens's left hip whereas Dr. Guberman found double the impairment. *Id.* at p. 4. Further, Dr. Guberman purportedly found left foot / ankle impairment where the other physicians did not. *Id.* Accordingly, the Office of Judges affirmed the claims administrator because Dr. Nadar's and Dr. Condaras's reports "are in substantial agreement and therefore found to be the most persuasive and convincing." *Id.* The Board of Review reached the same reasoned conclusion in affirming the Office of Judges in its decision of June 29, 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 based upon the Board's material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the grant of a 9% permanent partial disability award is affirmed.

Affirmed.

ISSUED: June 9, 2011

CONCURRED IN BY:

Chief Justice Margaret Workman

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Menis E. Ketchum

Justice Thomas E. McHugh