

**STATE OF WEST VIRGINIA**

**SUPREME COURT OF APPEALS**

**FILED**

**U.S. STEEL MINING CO., LLC, Petitioner**

**May 3, 2012**  
**RORY L. PERRY II, CLERK**  
**SUPREME COURT OF APPEALS**  
**OF WEST VIRGINIA**

**vs.) No. 100945 (BOR Appeal No. 2044039)**  
**(Claim No. 960006753)**

**WEST VIRGINIA OFFICE OF**  
**INSURANCE COMMISSIONER and**  
**GEORGE M. CLAY, Respondent**

**MEMORANDUM DECISION**

Petitioner U.S. Steel Mining Company, LLC, by Howard Salisbury Jr., its attorney, appeals the West Virginia Workers' Compensation Board of Review's Order. George M. Clay, by John Blair, his attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated June 29, 2010, in which the Board affirmed a January 20, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the claims administrator's March 24, 2009, Order and found Mr. Clay had met the statutory impairment threshold for a permanent total disability award. 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, this Court is of the opinion that this matter 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.

Mr. Clay suffered various workplace injuries and an occupational disease. The Permanent Total Disability Review Board held that Mr. Clay did not meet the statutory threshold to qualify for a permanent total disability award. Based on that finding, the claims administrator denied Mr. Clay's application for a permanent total disability award on July 7, 2008.

The Office of Judges, in reversing the claims administrator's Order, found that Mr. Clay met the statutory impairment threshold for a permanent total disability award, and remanded for further consideration of a permanent total disability award. The Office of Judges noted that the preponderance of the evidence did not support the Permanent Total Disability Review Board's findings. Instead, the Office of Judges noted that the evidence supported a finding that the preponderance of the evidence demonstrated that Mr. Clay regularly used and needed a cane, warranting a higher impairment rating for the right lower extremity. Thus, the Office of Judges found that Mr. Clay met the statutory impairment threshold, and his application should be remanded for further consideration of a permanent total disability award. The Board of Review reached the same reasoned conclusions in its Order of June 29, 2010.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of any constitutional or statutory provision, nor is it clearly the result of erroneous conclusions of law, nor is it based upon a material misstatement or mischaracterization of the evidentiary record. Therefore, the Board of Review Order is affirmed.

Affirmed.

**ISSUED: May 3, 2012**

**CONCURRED IN BY:**

Chief Justice Menis E. Ketchum  
Justice Margaret L. Workman  
Justice Thomas E. McHugh

**DISSENTING:**

Justice Robin J. Davis

Justice Brent D. Benjamin, Not Participating