

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

GEORGE C. DAUWEL, Petitioner

vs.) No. 100986 (BOR Appeal No. 2044019)
(Claim No. 2006044425)

FILED

December 7, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
GEORGE DAUWEL, d/b/a MERCER CLINIC,
Respondent

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated July 6, 2010, in which the Board reversed a January 8, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the claims administrator's July 30, 2008, Order, which granted Mr. Dauwel a 6% permanent partial disability award. The Office of Judges granted a 12% permanent partial disability award. The appeal was timely filed by the petitioner. 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 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 reversed the Office of Judge's Order, which granted Mr. Dauwel a 12% permanent partial disability award relative to his carpal tunnel syndrome impairment. Mr. Dauwel argues that the reports finding a lesser degree of impairment were not conducted in accordance with the *AMA Guides*; therefore, the report of Dr. Bruce A. Guberman, finding 12% impairment, should be accorded paramount weight, and an award consistent with Dr. Guberman's findings should be granted.

In reversing the Office of Judges, the Board of Review found that “12% impairment . . . is excessive because the EMG / NCS showed mild carpal tunnel syndrome.” (July 6, 2010, Board of Review Order, p. 2.) A claimant’s impairment from carpal tunnel syndrome may range between 0% and 6% in each hand. W. Va. Code R. § 85-20-64.5. Despite Dr. Guberman’s acknowledgment of the EMG finding only mild impairment, he nonetheless recommended the highest level of impairment. Dr. Robert Kropac, on the other hand, acknowledged the EMG’s findings and recommended an impairment rating commensurate with the EMG’s findings: 3% impairment per hand for a total of 6% whole person impairment. The Board of Review found Dr. Kropac’s report to be “relevant, credible, material and reliable.” *Id.* Thus, it reversed the Office of Judges’s grant of a 12% permanent partial disability award and reinstated the claims administrator’s grant of a 6% permanent partial disability award.

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 grant of a 6% permanent partial disability award is affirmed.

Affirmed.

ISSUED: December 7, 2011

CONCURRED IN BY:

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Thomas E. McHugh

DISSENTING:

Chief Justice Margaret L. Workman

Justice Menis E. Ketchum