

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

MICHAEL F. ESTREMERERA, Petitioner

January 19, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

**vs.) No. 101071 (BOR Appeal No. 2044113)
(Claim No. 980006604)**

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
ROYAL HARVEST, LTD., Respondent**

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated August 10, 2010, in which the Board affirmed a February 2, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's order denying compensability for left ring finger injury. The appeal was timely filed by the petitioner and a response was filed by the Office of Insurance Commissioner. 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, response, 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 denial of compensability for Mr. Estremera's left ring finger injury and found Dr. Syed Zahir's report, finding no impairment to the finger, reliable. Mr. Estremera asserts the evidence regarding the injury establishes he is entitled to compensability for the left ring finger injury. Dr. Clifford Carlson opined the injury should be included as a compensable component of the claim. Dr. Syed A. Zahir evaluated Mr. Estremera and found no impairment to the left ring finger.

The Office of Judges held Dr. Zahir found a fracture of the left 4th metacarpel with an old injury to the ring finger of the left hand without evidence of fracture. (February 2, 2010, Office of Judges Order, p. 4). It further noted Dr. Carlson found 3% impairment to the left ring finger but the report failed to include the applicable worksheet setting forth the basis for the rating. *Id.* Additionally, it held that without documentation regarding the range of motion for Dr. Carlson's rating there is not sufficient evidence to demonstrate Mr. Estremera has any permanent impairment for the left ring finger. *Id.* The Office of Judges, too, found no basis awarding Mr. Estremera a permanent partial disability award for the left ring finger injury, or for disputing the Claims Administrator's findings. The Board of Review reached the same reasoned conclusions in affirming the Office of Judges in its decision of August 10, 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 order of the Board of Review granting no permanent partial disability is affirmed.

Affirmed.

ISSUED: January 19, 2012

CONCURRED IN BY:

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Thomas E. McHugh

DISSENTING IN BY:

Chief Justice Menis E. Ketchum

Justice Margaret L. Workman