

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

**Jackie L. Snodgrass,
Claimant Below, Petitioner**

**August 3, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA**

**vs.) No. 101114 (BOR Appeal No. 2043999)
(Claim No. 970051111)**

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER
Commissioner Below, Respondent**

and

**Kroger Limited Partnership,
Employer Below, Respondent**

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated August 9, 2010, in which the Board affirmed a December 18, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's April 25, 2008 decision that Mr. Snodgrass was fully compensated for his injuries. The appeal was timely filed by the petitioner and a response was filed by the Employer. 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.

In its Order, the Office of Judges held that Mr. Snodgrass had been fully compensated for the injury occurring on March 29, 1997 and is not entitled to an increased permanent partial disability award. Mr. Snodgrass disputes this finding and asserts that the reports of Drs. Bailey, Condaras, and Mukkamala are not reliable, and that the claims administrator, the Office of Judges, and the Board of Review erred in not relying on the report of Dr. Guberman in determining his permanent partial disability award, because Dr. Guberman attributed Mr. Snodgrass's cervical myelopathy to the injury of March 29, 1997.

The Office of Judges found that Dr. Guberman was the only physician who believed that Mr. Snodgrass had not been fully compensated, and was also the only physician to find that Mr. Snodgrass's spinal decompression surgery on July 10, 2006 was associated with the instant claim. All other physicians who examined Mr. Snodgrass found these to be a direct result of an unrelated incident occurring in 2005. The Office of Judges noted that Mr. Snodgrass has received a 16% permanent partial disability award for injuries occurring to his lumbar spine and a 10% permanent partial disability award for injuries occurring to his cervical spine, and that the recommendations of all physicians, with the exception of Dr. Guberman, are lower than these prior awards. The Board of Review reached the same reasoned conclusion in its decision of August 9, 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 denial of the petitioner's request for a permanent partial disability award totaling 54% is affirmed.

Affirmed.

ISSUED: August 3, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Thomas E. McHugh

DISSENTING:

Justice Menis E. Ketchum