

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

CHARLES F. HUDSON, Petitioner

November 17, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 101152 (BOR Appeal No. 2044182)
(Claim No. 2001014842)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
A & E CONSTRUCTION, INC., Respondent

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated August 31, 2010, in which the Board affirmed a February 9, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's denial of permanent total disability benefits. 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.

Mr. Hudson previously received awards totaling 59% permanent partial disability, which he asserts qualifies him for an award of permanent total disability. This assertion is supported by the relevant medical evidence and the Office of Judges and Board of Review improperly reevaluated the medical evidence in denying permanent total disability. The Office of Insurance Commissioner asserts the Office of Judges and Board of Review

properly reviewed Mr. Hudson's impairments under the AMA Guides combined values table in determining Mr. Hudson did not meet the requisite 50% impairment threshold.

In its Order the Office of Judges found the Permanent Total Disability Review Board found Mr. Hudson only suffered from a 15% orthopedic impairment based upon the August 28, 2007, report of Joseph E. Grady, M.D. (February 9, 2010, Office of Judges Order, p. 8). It further held on the subsequent evaluation Mr. Hudson failed to meet the additional threshold required through the second evaluation of his previous permanent partial disability awards. "While the claimant met the initial threshold of 50%, the claimant has not met the second threshold which requires re-evaluation of the claimant's impairment to determine further entitlement to a permanent total disability award." *Id.* The Office of Judges, too, found no basis for an award of permanent total disability, 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 31, 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 Court affirms the Board of Review Order denying Mr. Hudson's request for a permanent total disability evaluation.

Affirmed.

ISSUED: November 17, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Robin J. Davis

Justice Thomas E. McHugh

DISSENTING:

Justice Brent D. Benjamin

Justice Menis E. Ketchum