

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

MICHAEL PRICE, Petitioner

November 15, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 101246 (BOR Appeal No. 2044301)
(Claim No. 2002059978)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
S. W. JACK DRILLING COMPANY, Respondent

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated September 2, 2010, in which the Board affirmed a March 17, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's October 8, 2008, decision that Mr. Price was not entitled to a permanent partial disability award for his right knee injury. The appeal was timely filed by the petitioner and a response was filed by the West Virginia 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 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. Price failed to establish that he is entitled to a permanent partial disability award for his right knee injury. Mr. Price disputes this finding and asserts, per the opinion of Dr. Guberman, that he is entitled to a 2% permanent partial disability award for this injury.

The Office of Judges noted that Dr. Nadar and Dr. Mukkamala recommended a permanent partial disability award of 0%, and that Dr. Guberman recommended a permanent partial disability award of 2%. The Office of Judges further noted that Dr. Guberman based his recommendation on a footnote to Table 62 on page 83 of the American Medical Association's Guides to the Evaluation of Permanent Impairment, 4th Edition, which provides that a 2% whole person impairment is given to a claimant who presents with patellofemoral pain, a history of direct trauma, and crepitation on physical examination without joint space narrowing evidenced by x-rays. The Office of Judges found that Mr. Price does not have a history of direct trauma to his right knee. It noted that Dr. Guberman based his recommendation upon a finding that Mr. Price has a history of direct trauma to his right knee, and that Dr. Guberman failed to examine any x-rays to confirm the absence of joint space narrowing as required by Table 62, and that therefore his reliance on Table 62 was incorrect. The Board of Review reached the same reasoned conclusion in its decision of September 2, 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 permanent partial disability benefits is affirmed.

Affirmed.

ISSUED: November 15, 2011

CONCURRED IN BY:

Justice Margaret L. Workman

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Menis E. Ketchum

Justice Thomas E. McHugh