

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

September 18, 2012

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

ROGER R. ADAMS, Petitioner

vs.) No. 101356 (BOR Appeal No. 2044231)
(Claim No. 2002039174)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
ELK RUN COAL COMPANY, INC., Respondent**

MEMORANDUM DECISION

Petitioner, Roger R. Adams, by John C. Blair, his attorney, appeals the Board of Review's Order granting a 6% permanent partial disability award for carpal tunnel syndrome. Elk Run Coal Company, Inc., by Jon H. Snyder, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated September 29, 2010, in which the Board reversed a February 24, 2010, Order of the Workers' Compensation Office of Judges granting Petitioner 12% permanent partial disability for carpal tunnel syndrome. In its Order, the Office of Judges reversed the claims administrator's Order granting Petitioner 6% permanent partial disability for carpal tunnel syndrome. 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, 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 prejudicial error in this case. However, 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. Adams argues that the Board of Review erred in reversing the Office of Judges' Order granting 12% permanent partial disability for his carpal tunnel syndrome and, instead, granted 6% impairment. He argues that the Board of Review improperly relied upon the report of Dr. Paul Craig, who failed to follow the American Medical Association's, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993), while Dr. Clifford Carlson properly determined Mr. Adams's impairment and opined 12% impairment. Dr. Prasadarao B. Mukkamala also evaluated Mr. Adams and opined 4% impairment for the carpal tunnel syndrome.

The Office of Judges considered the independent medical examinations and concluded the preponderance of the evidence supports an award of 12% permanent total disability. Dr. Craig's report was found less persuasive since Table 16, Page 57 of the *Guides* provides for 10% impairment for mild median entrapment of the wrist and this was not considered in Dr. Craig's report. The Office of Judges found Dr. Mukkamala's report and opinion of 4% impairment to be reliable and persuasive. As a result, the Office of Judges granted a 12% award based upon Dr. Carlson's report.

The Board of Review determined that Mr. Adams was initially examined by Dr. Craig who found 6% total impairment in both wrists, then by Dr. Carlson who found 12% impairment, and finally by Dr. Mukkamala who found 4% impairment. It held that Mr. Adams had good results from surgery and Dr. Carlson's impairment rating is excessive, while Dr. Craig's 6% impairment rating and Dr. Mukkamala's impairment rating are more consistent with Mr. Adams's condition. The Board concluded that the preponderance of the evidence supports the findings contained in Dr. Craig's report and reversed the Office of Judges Order and granted Mr. Adams 6% permanent total disability for his carpal tunnel syndrome.

We find that the decision of the Board of Review clearly represents an erroneous conclusion of law. The Office of Judges properly concluded that the claimant is entitled to a 12% award based upon the findings of Dr. Clifford Carlson. The award is supported by the evidence of record. Therefore, the Office of Judges' Order granting 12% permanent partial disability is reinstated.

Reversed.

ISSUED: September 18, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Margaret L. Workman
Justice Thomas E. McHugh

DISSENTING:

Justice Robin Jean Davis

Justice Brent D. Benjamin disqualified.