

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

WALTON E. FLANNERY, Petitioner

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

vs.) No. 101357 (BOR Appeal No. 2044333)
(Claim No. 2001027902)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
APPALACHIAN REGIONAL HEALTHCARE,
Respondent**

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated October 5, 2010, in which the Board affirmed a March 4, 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. Flannery asserts he was previously awarded the statutory minimum permanent partial disability benefits for consideration for an award of permanent total disability. These prior awards of permanent partial disability along with an award of 30% disability for post traumatic stress disorder from the Social Security Administration entitles him to the requested award of permanent total disability. The Office of Insurance Commissioner

responds that Mr. Flannery's award of disability for post traumatic stress disorder is unrelated to his compensable injuries and should not be considered in determining an award of permanent total disability.

The Office of Judges considered the award of disability from the Social Security Administration in determining to deny Mr. Flannery's request for permanent total disability. It found post traumatic stress disorder is not a recognized compensable injury in Mr. Flannery's claim. It is also not compensable due to its status as a mental-mental claim. (March 4, 2010, Office of Judges Order, pp. 15-16). Additionally, it held the reports and award from the Social Security Administration are not persuasive evidence and not translatable to the West Virginia workers compensation system. *Id.* It further held the reliable reports of Don Pinckney and Mark Hileman finding Mr. Flannery capable of employment in a light physical demand level were not rebutted by the evidence on record. *Id.* The Office of Judges, too, found no basis for granting Mr. Flannery's request for permanent total disability or for disputing the Claims Administrator's findings. The Board of Review reached the same reasonable conclusion in affirming the Office of Judges in its decision of October 5, 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. Flannery's request for permanent total disability.

Affirmed.

ISSUED: November 17, 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