

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

JAMES A. LAWSON, Petitioner

February 22, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 101374 (BOR Appeal No. 2044334)
(Claim No. 2008003347)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
ACF INDUSTRIES, INC., Respondent

MEMORANDUM DECISION

Petitioner James A. Lawson, by John Blair, his attorney, appeals the West Virginia Workers' Compensation Board of Review's Order denying an additional permanent partial disability award. ACF Industries, Inc., by Steven Wellman, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated October 5, 2010, in which the Board affirmed a March 18, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the Claims Administrator's February 26, 2009, Order granting the claimant an 8% permanent partial disability award. 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.

The Board of Review held that the claimant was fully compensated for the compensable injuries in this claim by the 8% permanent partial disability award. Mr. Lawson

disagrees with this finding and asserts that the Office of Judges incorrectly weighed the evidence under the preponderance standard. He contends that Dr. Guberman correctly applied the American Medical Association's, *Guides to Evaluation of Permanent Impairment* (4th ed. 1993), to arrive at the 12% impairment rating and this Court should enter such an award.

In its Order affirming the Claims Administrator's grant of an 8% permanent partial disability award, the Office of Judges held the preponderance of the evidence established that the petitioner was not entitled to an additional 4% award. The Office of Judges noted that permanent partial disability awards are designed to compensate claimants for residual disability. (March 18, 2010, Office of Judges Order, p. 3). The difference in physician ratings relates to range of motion deficits; accordingly the Office of Judges noted an improvement in the deficit relating to the issue of permanency of the impairment. The Board of Review reached the same reasoned conclusion in its Order 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 based upon the Board's material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the Board of Review Order is affirmed.

Affirmed.

ISSUED: : February 22, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh