

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

May 7, 2012

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

GARY A. DOTY, Petitioner

**vs.) No. 101444 (BOR Appeal No. 2044412)
(Claim No. 2006062503)**

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
CENTRE FOUNDRY & MACHINE COMPANY,
Respondent**

MEMORANDUM DECISION

Petitioner, Gary A. Doty, by Sue Ann Howard, his attorney, appeals the Board of Review order granting a 0% permanent partial disability award for a left wrist injury. Centre Foundry & Machine Company, by Alyssa A. Sloan, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated October 12, 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 order closing the claim for permanent partial disability benefits with a 0% permanent partial disability award for Mr. Doty's left wrist injury. 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.

The Board of Review held the preponderance of the evidence supports an award of 0% permanent partial disability for Mr. Doty's left wrist injury. Mr. Doty asserts the relevant medical evidence establishes he is entitled to a permanent total disability award for his left wrist injury. During deposition, Mr. Doty testified he does not recall a prior left wrist injury. Mary Doty also

testified during deposition testimony that Mr. Doty never suffered a left wrist injury prior to the injury on November 6, 2006.

The November 15, 2006, MRI studies on Mr. Doty's left wrist showed a fracture through the scaphoid, with fairly smooth margins, suggesting a prior wrist injury. Additional MRI studies on December 6, 2006, also showed corticated fracture edges, suggesting a remote injury. As a result of the second MRI studies Mr. Doty was diagnosed with an old fracture of the scaphoid bone with some evidence of a new injury.

On December 26, 2006, Mr. Doty was diagnosed with scaphoid nonunion advanced collapse or a previous scaphoid fracture that has gone onto nonunion and developed secondary to degenerative changes. Mr. Doty was further diagnosed with scapholunate advanced collapse from a scapholunate ligament disruption which may or may not be capable of being differentiated from the scaphoid nonunion advanced collapse findings, osteoarthritis of the radial carpal joint, STT joint, and diffuse synovitis of the wrist.

Dr. Milton opined Mr. Doty's whole body bone scintigraphy shows diffuse increased activity of the left wrist, differential includes post-traumatic and inflammatory arthritic etiologies, mild scromioclavicular joint degenerative changes on the right, increased activity throughout the left wrist as well as the first metacarpophalangeal joint. On April 10, 2007, Dr. Randall Scott, performed a medical records review and opined Mr. Doty's records establish a pre-existing and unrelated injury to the left wrist. Dr. C. Alan Tracy also wrote a letter opining Mr. Doty does suffer from pre-existing pathology to the left wrist which is not directly related to the compensable injury. Dr. Tracy further opines Mr. Doty likely suffered a prior fracture with minimal symptoms that healed with a thick scar rather than normal bone healing, leaving the bone susceptible to later injury.

Dr. Jack S. Koay evaluated Mr. Doty on February 15, 2007, and opined maximum medical improvement was not present for Mr. Doty's injury and further opined the wrist injury appears to be from a previous injury of unknown duration. On June 21, 2007, Dr. Joseph E. Grady II, diagnosed chronic left wrist and hand pain with significant synovitis and osteoarthritis of the left wrist and hand for which Dr. Grady recommended 0% impairment. Dr. Grady further opined the continued complaints are unrelated to the accepted diagnosis in this claim and no impairment rating is given for the pre-existing left wrist fracture. On September 19, 2007, Dr. Christopher Martin evaluated Mr. Doty and opined the injury is not work-related, however, the November 6, 2006, injury resulted in symptoms in the wrist which led to Mr. Doty seeking medical treatment. Dr. Martin recommended an 18% impairment due to the neutral positioning of the left wrist following complete arthrodesis. Dr. Waleed N. Mansour evaluated Mr. Doty on March 26, 2009, and opined Mr. Doty suffers from a fracture of the left scaphoid with mild degenerative changes of the scaphoid, trapezium, and trapezoid with narrowing of the radiocarpal joint. As a result, Dr. Mansour recommended a 23% impairment for the left wrist, with no apportionment for the pre-existing conditions to the left wrist.

On review of Mr. Doty's relevant medical evidence, the Office of Judges found this claim only accepted Diagnosis Code 842.00, sprain / strain of the wrist as a compensable component of

the claim. Dr. Mansour's report was found not credible since Dr. Mansour assumed a diagnosis different from that accepted under the claim. As a result, the Office of Judges held while Mr. Doty's left wrist condition, taken as a whole, may have resulted in substantial disability, as suggested by Dr. Mansour, the fact remains that the past decisions in this case restrict consideration of whole person impairment to that caused by the left wrist sprain / strain. Therefore, the Office of Judges affirmed the claims administrator's order granting a 0% permanent partial disability award. The Board of Review reached the same reasoned conclusion in its order of October 12, 2010.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of any constitutional or statutory provision, nor is it clearly the result of erroneous conclusions of law, nor is it based upon a material misstatement or mischaracterization of the evidentiary record. Therefore, the Court affirms the Board of Review order.

Affirmed.

ISSUED: **May 7, 2012**

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin Jean Davis

Justice Margaret L. Workman

Justice Thomas E. McHugh

Justice Brent D. Benjamin not participating