

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

RONNIE TACKETT, Petitioner

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

vs.) No. 101471 (BOR Appeal No. 2044388)
(Claim No. 2005033976)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
PEN COAL CORP., Respondent**

MEMORANDUM DECISION

Petitioner Ronnie Tackett, by John Blair, his attorney, appeals the West Virginia Workers' Compensation Board of Review's Order denying an additional permanent partial disability award. The West Virginia Office of Insurance Commissioner, by Laura Young, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated October 19, 2010, in which the Board reversed a March 26, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the Claims Administrator's September 26, 2007, and September 18, 2008, Orders granting the petitioner a total of a 16% 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 briefs, and the record presented, the Court finds that a memorandum decision is appropriate under Rule 21 of the Revised Rules.

The petitioner was diagnosed with bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome. Dr. Bachwitt evaluated the petitioner under Table 16 of the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) and found the petitioner suffered from a 2% impairment as a result of mild carpal tunnel syndrome for each hand in accordance with W. Va. Code R. § 85-20-64.5 (2006). Dr. Bachwitt also found the claimant had an additional 6% impairment for cubital tunnel syndrome. The Claims Administrator granted the

petitioner an 8% permanent partial disability award for each hand resulting from bilateral carpal tunnel syndrome and cubital tunnel syndrome.

The Office of Judges reversed the Claims Administrator's Order and found there was sufficient medical evidence to grant an 11% permanent partial disability award for each hand based on Dr. Carlson's report.

The Board of Review reversed the Office of Judges' order and reinstated the Claims Administrator's original award of 8% for each hand. The Board of Review found that Dr. Bachwitt's report was relevant, credible, material and reliable, noting that Dr. Carlson failed to discuss W.Va. Code R. § 85-20 in his evaluation.

In *Davies v. West Virginia Office of Ins. Com'r*, 708 S.E.2d 524, 227 W.Va. 330 (2011), this Court held that W. Va. Code R. § 85-20-64.5 (2006) was invalid as it applied to Table 16 of the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, at 57 (4th ed. 1993). The Board of Review noted that Dr. Mukkamala's report was consistent with the nature of the petitioner's injury and treatment. Dr. Mukkamala's report, utilizing Table 15, correctly applies the AMA *Guides* and W. Va. Code R. § 85-20-64.5 (2006) and reflects an impairment consistent with mild carpal tunnel syndrome as found by each of the evaluating physicians.

For the foregoing reasons, we find that the decision of the Board of Review is clearly the result of erroneous conclusions of law. Therefore, in light of this Court's holding in *Davies*, this appeal is remanded to the Board of Review with instructions to enter a total award of 8% permanent partial disability as evidenced by the report of Dr. Mukkamala.

Reverse and Remand.

ISSUED: March 22, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh

DISSENTING:

Justice Robin J. Davis