

**STATE OF WEST VIRGINIA**

**SUPREME COURT OF APPEALS**

**FILED**

**GARRY W. MORAN, Petitioner**

**March 26, 2012**  
**RORY L. PERRY II, CLERK**  
**SUPREME COURT OF APPEALS**  
**OF WEST VIRGINIA**

**vs.) No. 101478 (BOR Appeal No. 2044480)**  
**(Claim No. 940041203)**

**WEST VIRGINIA OFFICE OF**  
**INSURANCE COMMISSIONER and**  
**T & T FUELS, INC., Respondent**

**MEMORANDUM DECISION**

Petitioner Garry W. Moran, by Robert Stultz, his attorney, appeals the decision of the Board of Review. The West Virginia Office of Insurance Commissioner, by David Stuart, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated October 21, 2010, in which the Board affirmed an April 22, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the claims administrator's May 11, 2009, decision granting Mr. Moran an additional 7% 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.

In its Order, the Office of Judges held that Mr. Moran is entitled to an additional 4% permanent partial disability award, for a total permanent partial disability award of 8% for his compensable injuries, in accordance with the opinion of Dr. Mukkamala. Mr. Moran disputes this finding and asserts that, per the opinion of Dr. Milan, he is entitled to an additional permanent partial disability award of 12%, for a total of 16%.

The Office of Judges found that the opinions of Dr. Steinman, on which the claims administrator relied, and Dr. Milan, on which Mr. Moran relies, are inconsistent with the methods for calculating permanent impairment detailed in the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (4<sup>th</sup> ed. 1995). The Office of Judges found that Dr. Mukkamala was the only physician to properly apply the *Guides*, and that his report is therefore the most persuasive and convincing. The Board of Review reached the same reasoned conclusion in its decision of October 21, 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 the Board's material misstatement or mischaracterization of the evidentiary record. Therefore, the decision of the Board of Review is affirmed.

Affirmed.

**ISSUED: March 26, 2012**

**CONCURRED IN BY:**

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh

**DISSENTING:**

Chief Justice Menis E. Ketchum