

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

April 24, 2012

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

FREDDIE W. DAWSON, Petitioner

**vs.) No. 101514 (BOR Appeal No. 2044543)
(Claim No. 2001016511)**

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
UNITED TALENT INDUSTRIAL, INC., Respondent**

MEMORANDUM DECISION

Petitioner, Freddie W. Dawson, by John C. Blair, his attorney, appeals the Board of Review order granting him 3% permanent partial disability for a left wrist injury. The Office of Insurance Commissioner, by Gary M. Mazezka, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated November 8, 2010, in which the Board affirmed an April 28, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's 3% 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, 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 the award of 3% permanent partial disability for Mr. Dawson's left wrist injury. Mr. Dawson asserts the Board of Review failed to properly consider the independent medical evaluation of Dr. Victor Poletajev who found 11% impairment to the left wrist. Two other evaluating physicians also evaluated Mr. Dawson: Dr. Ramanathan Padmanaban who found 3% impairment and Dr. Prasadarao B. Mukkamala who found 2% impairment.

In its Order, the Office of Judges considered each of the evaluating physician's reports. It found that Dr. Padmanaban and Dr. Poletajev's reports evaluating Mr. Dawson's grip strength were supported by the preponderance of the evidence. The loss of range of motion measurements were then considered with the Office of Judges affording greater weight to the report of Dr. Padmanaban, although the range of motion findings were similar to those found in Dr. Mukkamala's report. The Office of Judges also found Dr. Poletajev's findings are extremely higher than the findings of Dr. Padmanaban and Dr. Mukkamala, thus his conclusions are less representative of Mr. Dawson's whole-person impairment when comparing medical evidence. As a result, it held Mr. Dawson was properly awarded a 3% permanent partial disability award for the left wrist injury. The Office of Judges, too, found no basis for awarding Mr. Dawson an additional 8% permanent partial disability, or for disputing the claims administrator's findings. The Board of Review reached the same reasoned conclusions in affirming the Office of Judges in its decision of November 8, 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 denial of Mr. Dawson's request for an additional award of 8% permanent partial disability is affirmed.

Affirmed.

ISSUED: April 24, 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