

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

April 13, 2012

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

JACK A. CANTERBURY, Petitioner

**vs.) No. 101599 (BOR Appeal No. 2044571)
(Claim No. 2000023531)**

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
ENGINES, INC., Respondent**

MEMORANDUM DECISION

Petitioner Jack A. Canterbury, by Lawrence Lowry, his attorney, appeals the West Virginia Workers' Compensation Board of Review's Order denying a permanent total disability award. The West Virginia Office of Insurance Commissioner, by Gary Mazezka, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated November 17, 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 affirmed the claims administrator's July 25, 2008, Order which denied a permanent total disability award. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

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 affirmed the holding that Mr. Canterbury is not permanently and totally disabled. Mr. Canterbury disagrees and asserts that given his multiple compensable injuries with impairment totaling close to 50%, and his psychiatric problems, he is unable to engage in substantial gainful activity and should be found permanently and totally disabled.

In holding that the preponderance of the evidence did not support a permanent total disability award, the Office of Judges noted that Mr. Canterbury did not stop working due to a physical

problem. The Office of Judges also noted inconsistent efforts and notes of symptom exaggeration in several evaluations. It further noted that Mr. Canterbury's psychiatric problems appear to be longstanding and not related to any particular compensable injury. The Board of Review reached the same reasoned conclusion in affirming the Office of Judges in its decision of November 17, 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 Board of Review Order of November 17, 2010, is affirmed.

Affirmed.

ISSUED: April 13, 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