

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

June 29, 2012

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

ROBERT J. WORKMAN, Petitioner

**vs.) No. 11-0004 (BOR Appeal No. 2044398)
(Claim No. 2003027739)**

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
COOK'S MANUFACTURING COMPANY, Respondent**

MEMORANDUM DECISION

Petitioner, Robert J. Workman, by Cathy L. Greiner, his attorney, appeals the Board of Review order denying an additional permanent partial disability award. The claimant was previously awarded a 13% award. The Office of Insurance Commissioner, by David L. Stuart, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated December 3, 2010, in which the Board affirmed an April 30, 2010, Order of the Workers' Compensation Office of Judges granting Mr. Workman a 0% permanent partial disability award. In its Order, the Office of Judges reversed the claims administrator's order granting Mr. Workman a 1% permanent partial disability award. The appeal was timely filed by the petitioner and a response was filed by the Office of Insurance Commissioner. 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, 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 establishes Mr. Workman is not entitled to an additional award of permanent partial disability. Mr. Workman suffered a low back injury in 2003, and received an initial 13% permanent partial disability award. Subsequent to this

award, Mr. Workman sought to obtain an additional permanent partial disability award, asserting he suffered an aggravation or progression of his injury following the initial award.

Dr. Victor Poletajev evaluated Mr. Workman and found 19% whole person impairment resulting from the compensable injury. Thereafter, Mr. Workman was also evaluated by Dr. Ramanathan Padmanaban who found 14% impairment. The claims administrator then granted Mr. Workman an additional 1% permanent partial disability. Dr. Prasadarao Mukkamala also evaluated Mr. Workman and found 8% impairment according to West Virginia Code of State Rules § 85-20-1, *et seq.*

The Office of Judges considered the independent medical evaluations and determined Dr. Mukkamala fully complied with the requirements of Rule 20, thus, Mr. Workman was fully compensated by his prior permanent partial disability award. Dr. Padmanaban's report was afforded less evidentiary weight since it failed to follow the appropriate Rule 20 guidelines. In the same vein, the Office of Judges determined Dr. Poletajev's report also failed to follow the requisite Rule 20 guidelines and was also afforded less evidentiary weight. The Office of Judges held the preponderance of the evidence supports the conclusions contained in Dr. Mukkamala's report and found Mr. Workman was previously fully compensated for his low back injury. The Office of Judges, too, found no basis for a further award of 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 December 3, 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 decision of the Board of Review is affirmed.

Affirmed.

ISSUED: June 29, 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