

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

October 28, 2011

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

LEROY PHILIP MULLINS, Petitioner

**vs.) No. 11-0044 (BOR Appeal No. 2044526)
(Claim No. 970011650)**

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

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated December 7, 2010, in which the Board affirmed a April 22, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's April 16, 2009, decision to grant Mr. Mullins a 4% permanent partial disability award and close his permanent partial disability claim. The appeal was timely filed by the petitioner and a response was filed by the West Virginia 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.

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. Mullins is entitled to a permanent partial disability rating of 4% whole person impairment for the facial scarring and dysesthesia that resulted from his August 10, 1996, injury. Mr. Mullins disputes this finding and asserts that Dr. Padmanaban failed to properly apply Rule 20 and the American Medical Association guidelines, and that the claims administrator failed to consider all compensable

conditions in making a determination in his case.

In its Order, the Office of Judges found that the claims administrator based the decision to award Mr. Mullins permanent partial disability on the February 13, 2009, report of Dr. Padmanaban, who recommended a 4% permanent partial disability award. (April 22, 2010, Office of Judges Order, p. 5). It also found this to be exactly the same award recommended by Dr. Guberman on July 7, 2008. *Id.* The Office of Judges further noted that following a November 28, 2001, 7% permanent partial disability award by the claims administrator, which was based on a July 16, 2001, report by Dr. Bachwitt and was affirmed by the Office of Judges on December 27, 2002, the Board of Review remanded for another medical evaluation on August 20, 2003. *Id.* at 5-6. As a direct result of that Order, Dr. Padmanaban performed an independent medical evaluation on February 13, 2009. *Id.* at 6. Finally, the Office of Judges found Mr. Mullins had failed to present any evidence to refute the findings of Dr. Guberman and Dr. Padmanaban. *Id.* The Board of Review reached the same reasoned conclusion in its December 7, 2010, decision.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of constitutional or statutory provision, clearly the result of erroneous conclusions of law, or is based upon the Board's material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the 4% permanent partial disability award is affirmed.

Affirmed.

ISSUED: October 28, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Thomas E. McHugh

DISSENTING:

Justice Menis E. Ketchum