

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

WILLIAM FRITZMAN, Petitioner

July 20, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 11-0142 (BOR Appeal No. 2044761)
(Claim No. 2004005614)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
CONSOLIDATION COAL COMPANY, Respondent**

MEMORANDUM DECISION

Petitioner, William Fritzman, by M. Jane Glauser, his attorney, appeals the Board of Review Order denying permanent total disability benefits. Consolidation Coal Company, by Edward M. George, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated December 22, 2010, in which the Board affirmed a June 7, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's denial of permanent total disability benefits. 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 affirmed the Permanent Total Disability Review Board's (hereinafter "PTD Review Board") decision finding Mr. Fritzman does not suffer from at least fifty percent disability and does not qualify for a permanent total disability award. Mr. Fritzman asserts the PTD Review Board improperly combined his various permanent partial disabilities resulting in a double reduction of his whole body impairment. Additionally, Mr. Fritzman asserts Dr. Werntz's report does not present an accurate picture of his whole body impairment since the report contains multiple

factual errors and the fact that Dr. Werntz acknowledged that he did not review all of Mr. Fritzman's medical records.

Despite Mr. Fritzman's argument to the contrary, the Office of Judges concluded that the PTD Review Board is authorized to reevaluate prior awards. W. Va. Code § 23-4-6(n)(1) (2005). Mr. Fritzman's psychiatric and hearing loss claims did not warrant reevaluation since Mr. Fritzman was granted full credit for the prior impairment awards. Further, the failure of the Board to reconsider Mr. Fritzman's occupational pneumoconiosis claim, when there was a prior finding of 0% disability for this claim, the Office of Judges determined was appropriate in light of the prior impairment findings. The Office of Judges also held the Board did not err in failing to consider Mr. Fritzman's functional capacity evaluations. As a result, the Office of Judges held Mr. Fritzman did not meet his burden of proof to establish his entitlement to a permanent total disability award and affirmed the claims administrator. The Board of Review reached the same reasoned conclusion in its Order of December 22, 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 Court affirms the Board of Review Order denying Mr. Fritzman's application for permanent total disability.

Affirmed.

ISSUED: July 20, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Margaret L. Workman

Justice Thomas E. McHugh

Justice Brent D. Benjamin not participating