

**STATE OF WEST VIRGINIA**

**SUPREME COURT OF APPEALS**

**FILED**

**MICHAEL A. HENSLEY, Petitioner**

**August 14, 2012**  
**RORY L. PERRY II, CLERK**  
**SUPREME COURT OF APPEALS**  
**OF WEST VIRGINIA**

**vs.) No. 11-0247 (BOR Appeal No. 2044655)**  
**(Claim No. 2004043425)**

**WEST VIRGINIA OFFICE OF**  
**INSURANCE COMMISSIONER and**  
**COAL RUSH MINING, INC., Respondent**

**MEMORANDUM DECISION**

Petitioner Michael A. Hensley, by John Blair, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. The West Virginia Office of Insurance Commissioner, by Jack Rife, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated January 18, 2011, in which the Board reversed a May 24, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the claims administrator's February 23, 2009, decision granting Mr. Hensley a 4% permanent partial disability award for bilateral carpal tunnel syndrome. 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.

Mr. Hensley was employed as a motor grader operator with Coal Rush Mining, Inc. Mr. Hensley developed bilateral carpal tunnel syndrome in the course of his employment, and the claim was held compensable by this Court on October 22, 2008. He has undergone three independent medical examinations to determine the amount of permanent impairment resulting from his bilateral carpal tunnel syndrome. On January 18, 2009, Dr. Bachwitt recommended a total permanent partial disability award of 4%, or 2% per hand. On May 15, 2009, Dr. Guberman recommended a total

permanent partial disability award of 12%, or 6% per hand. On December 29, 2009, Dr. Mukkamala found that Mr. Hensley suffered from a 4% whole person impairment as a result of carpal tunnel syndrome, but felt that Mr. Hensley's obesity contributed to his development of the condition and therefore attributed 2% of the total impairment to Mr. Hensley's obesity. Dr. Mukkamala recommended a total permanent partial disability award of 2%, or 1% per hand.

In its Order, the Board of Review reversed the May 24, 2010, Order of the Office of Judges granting Mr. Hensley a 12% permanent partial disability award, and reinstated the February 23, 2009, claims administrator's decision granting Mr. Hensley a 4% permanent partial disability award for bilateral carpal tunnel syndrome. Mr. Hensley disputes this finding and asserts, per the opinion of Dr. Guberman, that he is entitled to a 12% permanent partial disability award for bilateral carpal tunnel syndrome.

The Board of Review found that the Office of Judges' decision to give more weight to the report of Dr. Guberman was clearly wrong in light of the evidence of record. The Board of Review further found that because Mr. Hensley missed no work as a result of his carpal tunnel syndrome and received minimal treatment, Dr. Guberman's recommendation of a 12% permanent partial disability award is excessive. The Board of Review also found that Dr. Bachwitt's recommendation and Dr. Mukkamala's pre-apportionment recommendation more accurately reflect Mr. Hensley's current condition, given the evidence of record. The Board of Review held that Dr. Bachwitt's evaluation, which the claims administrator relied on, was both credible and reliable.

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: August 14, 2012**

**CONCURRED IN BY:**

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Thomas E. McHugh

**DISSENTING:**

Chief Justice Menis E. Ketchum

Justice Margaret L. Workman