

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

WILLIAM D. COMBS,
Claimant Below, Petitioner

FILED
October 31, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 11-0424 (BOR Appeal No. 2045082)
(Claim No. 2009084169)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER**
Commissioner Below, Respondent

and

PANTHER BRANCH COAL COMPANY,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner William D. Combs, by John Blair, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Panther Branch Coal Company, by Robert Busse, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated February 18, 2011, in which the Board affirmed a September 20, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's July 3, 2009, decision granting Mr. Combs a 3% permanent partial 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.

Mr. Combs was employed as a utility man with Panther Branch Coal Company. On March 10, 2009, he injured his right ring finger; the claim was held compensable for contusion of the finger, open wound of the finger, and traumatic amputation of the finger. Mr. Combs has undergone three independent medical evaluations in relation to this injury. On June 19, 2006, Dr. Bachwitt examined Mr. Combs and recommended a 3% permanent partial disability award. On November 10, 2009, Dr. Poletajev performed an examination and recommended a 14% permanent partial disability award. On March 17, 2010, Dr. Mir examined Mr. Combs and also recommended a 3% permanent partial disability award. He disagreed with Dr. Poletajev's recommendation and noted that Dr. Poletajev attributed 11% of the impairment rating to weakness of grip strength. Dr. Mir stated that the measurement of grip strength is not indicated pursuant to the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (4th ed. 1995) when evaluating the type of injury sustained by Mr. Combs.

In its Order affirming the July 3, 2009, claims administrator's decision, the Office of Judges held that the preponderance of the evidence indicates that Mr. Combs is entitled to the 3% permanent partial disability award recommended by Drs. Bachwitt and Mir. Mr. Combs disputes this finding and asserts, per the opinion of Dr. Poletajev, that he is entitled to an additional 11% permanent partial disability award, for a total disability award of 14% stemming from the March 10, 2009, injury.

The Office of Judges noted that both Dr. Bachwitt and Dr. Mir are orthopedic surgeons, while Dr. Poletajev is a chiropractor. The Office of Judges then found that the opinions of Dr. Bachwitt and Dr. Mir are largely the same and corroborate each other. The Office of Judges granted greater evidentiary weight to Dr. Bachwitt's and Dr. Mir's opinions based on a finding that orthopedic surgeons possess qualifications that make them, rather than a chiropractor, better suited to assessing finger injuries. The Board of Review reached the same reasoned conclusion in its decision of February 18, 2011. We agree with the reasoning and conclusions of the Board of Review.

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: October 31, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin J. Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh