

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

JIMMY DEAN HATFIELD, Petitioner.

v.) No. 11-0508 (BOR Appeal No. 2045148)
(Claim No. 2006205209)

FILED

December 6, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

**WEST VIRGINIA OFFICE OF INSURANCE
COMMISSIONER and HI-TECH CONSTRUCTION
COMPANY, INC., Respondent.**

CORRECTED

MEMORANDUM DECISION

Petitioner, Jimmy Dean Hatfield, by John C. Blair, his lawyer, appeals the decision of the West Virginia Workers' Compensation Board of Review granting him an 8% permanent partial disability award for his low back injury. Petitioner contends that the Board erred and that he is entitled to an additional 5% impairment, for a total impairment award of 13%. Respondent Homer Laughlin China Co., by T. Jonathan Cook, its lawyer, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order of February 24, 2011, in which the Board affirmed a September 30, 2010, 2008, Order of the Office of Judges which granted the petitioner an 8% permanent partial disability award. In its Order, the Office of Judges affirmed the claims administrator's decision to grant the petitioner an 8% 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. 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 petitioner, Jimmy Dean Hatfield, slipped and fell approximately five feet from a truck to the ground, landing on his lower back. He experienced back pain and was diagnosed with an acute musculoskeletal mechanical back strain and a fracture of the transverse processes in the lumbar spine.

The claims administrator referred petitioner for an evaluation with Dr. Prasadarao Mukkamala who found that petitioner had an 8% impairment. As a result, the claims administrator awarded the petitioner an 8% permanent partial disability award. The petitioner protested the award.

Thereafter, the petitioner was evaluated by Dr. Bruce Guberman who found a 13% impairment. The employer then sent petitioner to Dr. Paul Bachwitt for an evaluation. Dr. Bachwitt found the petitioner had an 8% impairment.

The Office of Judges affirmed the claims administrator and awarded the petitioner an 8% permanent partial disability award. The Administrative Law Judge weighed the conflicting medical evidence and found that the reports of Dr. Mukkamala and Dr. Bachwitt were more credible when considered with all the evidence. The ALJ found, by a preponderance of the evidence, that the petitioner was entitled to an 8% permanent partial disability award. This award was affirmed by the Board of Review.

West Virginia Code § 23-4-1(g) requires the Office of Judges to weigh all the evidence by assessing its credibility, materiality and reliability and make a finding by a preponderance of the evidence. This was done by the Office of Judges. Thereafter, the Board of Review properly evaluated the OoJ's decision under the standard contained in West Virginia Code § 23-5-12.

After scrutinizing the record and the parties' briefs, we affirm the decision of the Board of Review. Its decision is not in violation of any constitutional or statutory provision, is not the result of an erroneous conclusion of law, nor is it based upon a material misstatement or mischaracterization of the evidentiary record.

Affirmed.

ISSUED: December 6, 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