

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

June 29, 2012

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

JOHNNY R. HALL, Petitioner

**vs.) No. 11-0551 (BOR Appeal No. 2044937)
(Claim No. 2000018782)**

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

MEMORANDUM DECISION

Petitioner, Johnny R. Hall, by John C. Blair, his attorney, appeals the Board of Review order granting an additional 2% permanent partial disability award above the 4% previously awarded. The Office Insurance Commissioner by David L. Stuart, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated March 8, 2011, in which the Board reversed an August 5, 2010, Order of the Workers' Compensation Office of Judges granting Mr. Hall an additional 6% permanent partial disability award. In its Order, the Office of Judges reversed the claims administrator's order granting Mr. Hall no additional permanent partial disability. The appeal was timely filed by the petitioner and a response was filed by the 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.

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 held Mr. Hall was entitled to an additional 2% permanent partial disability award based upon Dr. Charles C. Weise's recommendation. Mr. Hall disputes this finding, asserting that Dr. Ahmed D. Faheem's report, opining an 8% impairment, was not properly considered by the Board of Review.

Mr. Hall initially suffered severe crush injuries to the pelvic region following a rib roll. Subsequent to these injuries, Mr. Hall began treatment with Dr. Francis Saldanaha for depression, which Dr. Saldanaha attributed to Mr. Hall's compensable injuries. In 2006, Mr. Hall was hospitalized for abuse of his prescription medications, over-the-counter pain medications, and alcohol. At the time of hospitalization, Mr. Hall acknowledged he was suffering from personal stressors including the recent charges against his son for Driving Under the Influence, Causing Death and the death of two of Mr. Hall's brothers.

Dr. Ahmed Faheem evaluated Mr. Hall and diagnosed Depressive Disorder NOS related to chronic pain and other complications secondary to the October 2, 1999 injuries. While Dr. Faheem's evaluation resulted in a Global Assessment of Functioning (hereinafter "GAF") of 55, Mr. Hall was found to suffer an overall psychiatric impairment of 15-20%. This impairment rating was reduced to 8% to account for the non-compensable stressors. Dr. Charles Weise conducted two evaluations relative to Mr. Hall's psychiatric impairment. In the first, report, Dr. Weise found 5% impairment, however, the report attributed all of the impairment to non-compensable stressors since the symptoms did not manifest within six months of the original compensable injury. In a later report, Dr. Weise again found 5% impairment, and attributed 4% of the impairment to non-compensable stressors.

The Office of Judges held the preponderance of the evidence establishes Mr. Hall suffers from an 8% impairment due to his psychiatric condition. The significant difference between Dr. Faheem and Dr. Weise's report was determined to be the GAF scores. Dr. Faheem's GAF of 55 was found consistent with moderate symptoms, while Dr. Weise's GAF of 61 was found consistent with mild symptoms. Since Dr. Weise recommended an additional six months of counseling and treatment in 2009, the Office of Judges held "it appears that [Mr. Hall] has needed regular outpatient treatment since 2000, so Dr. Faheem's report is found more persuasive because his estimate of the GAF appears to be the most accurate of record."

Mr. Hall's 6% permanent partial disability award was reversed by the Board of Review which found Mr. Hall is only entitled to an additional 2% permanent partial disability award. The Board of Review held the record does not support an impairment rating of 15-20%, as suggested by Dr. Faheem since Mr. Hall does not have any symptoms indicating a significant impediment to useful functioning. Dr. Weise's report finding a documented GAF of 61, representing minimal impairment, was found more persuasive. Therefore, the Board of Review reversed the Office of Judges and granted Mr. Hall an additional 2% permanent partial disability award, for a total of 4%.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear statutory provision nor is the decision based upon the Board's material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the Court affirms the Board of Review Order.

Affirmed.

ISSUED: June 29, 2012

CONCURRED IN BY:

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

DISSENTING:

Chief Justice Menis E. Ketchum