

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

December 5, 2012

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

WAYNE F. BLACKWELL II, Petitioner

vs.) **No. 11-0655** (BOR Appeal No. 2044921)
(Claim No. 2005043651)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
MEC CONSTRUCTION, INC., Respondent**

MEMORANDUM DECISION

Petitioner Wayne F. Blackwell II, by Cathy Greiner, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. The West Virginia Office of Insurance Commissioner, by Anna Faulkner, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated March 21, 2011, in which the Board affirmed an August 10, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's August 11, 2009, Order granting Mr. Blackwell an additional 1% 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. Blackwell was working for MEC Construction, Inc. when he injured his right leg. On August 29, 2006, Mr. Blackwell was granted an 8% permanent partial disability award for the compensable injury. Based on the report by Dr. Wertz, the claims administrator granted Mr. Blackwell an additional 1% permanent partial disability award on August 11, 2009.

The Office of Judges found that the preponderance of the evidence supported the additional 1% permanent partial disability award. On appeal, Mr. Blackwell argues that Dr.

Poletajev's recommendation of 18% whole person impairment is the best evidence of record. The West Virginia Office of Insurance Commissioner argues that the evidence establishes that Mr. Blackwell was only entitled to the additional 1% permanent partial disability award.

In reaching the conclusion to affirm the additional 1% permanent partial disability award, the Office of Judges considered the reports of Drs. Jin, Werntz, and Poletajev. The Office of Judges found that Dr. Poletajev's report was not supported by a thorough review of the record, and concluded that the evidence supported the additional 1% permanent partial disability award. The Board of Review reached the same reasoned conclusion in its decision on March 21, 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: December 5, 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