

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

April 19, 2013

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

DENNIS D. DEBOARD,
Claimant Below, Petitioner

vs.) No. 11-1023 (BOR Appeal No. 2045501)
(Claim No. 2008010015)

TRIPLE S CORPORATION,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Dennis D. DeBoard, by Reginald Henry, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Triple S Corporation, by Bradley Crouser, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated June 10, 2011, in which the Board affirmed a January 7, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's September 25, 2009, decision granting Mr. DeBoard an 8% permanent partial disability award for bilateral carpal tunnel syndrome. The Court has carefully reviewed the records, written arguments, and appendices contained in the briefs, and the case is mature for consideration.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Rules of Appellate Procedure.

Mr. DeBoard worked for Triple S Corporation as a fabricator and welder. As a result of his employment he developed bilateral carpal tunnel syndrome, and the claim was held compensable for such in 2008. On September 25, 2009, the claims administrator granted Mr. DeBoard an 8% permanent partial disability award based on the recommendation of Dr. Mir.

The Office of Judges affirmed the claims administrator's Order, and held that the preponderance of the evidence did not establish that Mr. DeBoard was entitled to an additional

permanent partial disability award. On appeal, Mr. DeBoard disagrees and asserts that he is entitled to a total of a 12% permanent partial disability award based on the evaluation by Dr. Guberman which he argues is supported by clinical findings. Triple S Corporation maintains that Mr. DeBoard has been fully compensated by the 8% permanent partial disability award. Dr. Mir, on September 2, 2009, recommended that Mr. DeBoard suffers from an 8% impairment due to bilateral carpal tunnel syndrome. On February 23, 2010, Dr. Guberman found a 12% impairment due to bilateral carpal tunnel syndrome. Dr. Condaras found an 8% impairment on July 14, 2010.

In affirming the claims administrator's Order, the Office of Judges concluded that the evidence did not establish that Mr. DeBoard has greater than 8% whole person impairment due to bilateral carpal tunnel syndrome. It noted that Dr. Guberman and Dr. Condaras disagreed on whether Mr. DeBoard's decreased sensitivity was forgotten during or interfered with activity under West Virginia Code of State Rules § 85-20-Table 11 (2006). The Office of Judges concluded that the evidence established that Dr. Condaras's findings were persuasive as Mr. DeBoard had improved in the four months since he had seen Dr. Guberman. Thus, the Office of Judges affirmed the 8% permanent partial disability award. The Board of Review reached the same reasoned conclusions in its decision of June 10, 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: April 19, 2013

CONCURRED IN BY:

Chief Justice Brent D. Benjamin
Justice Robin J. Davis
Justice Margaret L. Workman
Justice Menis E. Ketchum
Justice Allen H. Loughry II