

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

TIMOTHY R. JEFFREY,
Claimant Below, Petitioner

FILED
February 4, 2014
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 11-1426 (BOR Appeal No. 2045825)
(Claim No. 2009084891)

PINNACLE MINING COMPANY,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Timothy R. Jeffrey, by Gregory Prudich, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Pinnacle Mining Company, by Sean Harter, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated September 19, 2011, in which the Board affirmed an April 8, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's April 12, 2010, decision granting Mr. Jeffrey an additional 1% permanent partial disability award for his lumbar spine. 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. Jeffrey injured his lumbar spine on March 17, 2009, when he slipped while carrying a forty pound pump. He was previously granted a 7% permanent partial disability award for a prior lumbar spine injury that occurred on August 21, 2006. Mr. Jeffrey has undergone three independent medical evaluations to determine the amount of permanent impairment resulting from the March 17, 2009, injury. Dr. Mukkamala evaluated Mr. Jeffrey on March 24, 2010, and found that he had 8% whole person impairment for both lumbar spine injuries after applying West Virginia Code of State Rules § 85-20-Table C (2006). He then apportioned for the prior 7%

permanent partial disability award for the lumbar spine and recommended an additional 1% permanent partial disability award. On July 29, 2010, Dr. Guberman examined Mr. Jeffrey. He apportioned for the prior 7% permanent partial disability award before applying West Virginia Code of State Rules § 85-20-Table C, and found that Mr. Jeffrey sustained 7% whole person impairment as a result of the March 17, 2009, injury. Because Mr. Jeffrey had already received a 1% permanent partial disability award for the March 17, 2009, injury, he recommended an additional 6% permanent partial disability award. On November 17, 2010, Dr. Condaras examined Mr. Jeffrey and found that he was fully compensated by the prior 7% and 1% permanent partial disability awards. He agreed with the conclusions of Dr. Mukkamala, and disagreed with Dr. Guberman's recommendation based on a finding that Dr. Guberman apportioned for the prior permanent partial disability at the incorrect time.

In its Order affirming the April 12, 2010, claims administrator's decision, the Office of Judges held that the preponderance of the evidence shows that Mr. Jeffrey suffered an additional 1% permanent impairment of his lumbar spine as a result of the March 17, 2009, injury. Mr. Jeffrey disputes this finding and asserts, per the opinion of Dr. Guberman, that he is entitled to an additional 6% permanent partial disability award.

The Office of Judges found Dr. Mukkamala's report to be persuasive and noted that Dr. Condaras agreed with the recommendation of Dr. Mukkamala. The Office of Judges further found that the opinion of Dr. Guberman is unpersuasive because he did not properly apportion for Dr. Jeffrey's prior 7% permanent partial disability award. The Board of Review reached the same reasoned conclusions in its decision of September 19, 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: February 4, 2014

CONCURRED IN BY:

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