

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

MICHAEL DENNIS CLINE,
Claimant Below, Petitioner

FILED
September 10, 2013
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 11-1625 (BOR Appeal No. 2045928)
(Claim No. 2005014708)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER
Commissioner Below, Respondent

and

INDEPENDENCE COAL COMPANY, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Michael Dennis Cline, by John C. Blair, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. The West Virginia Office of the Insurance Commissioner, by Gary M. Mazezka, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated November 4, 2011, in which the Board affirmed an April 26, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's October 21, 2010, Order denying the claim for permanent total disability benefits. 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. Cline was employed as a coal miner/electrician for Independence Coal Company, Inc. when he injured his back on September 20, 1997, while pulling a large electrical cable. Mr. Cline applied for permanent total disability benefits. On October 21, 2010, the claims

administrator denied his claim for failure to meet the required level of whole body medical impairment for further consideration of permanent total disability benefits.

The Office of Judges found that Mr. Cline had not met his burden in demonstrating that he sustained a total 50% whole body impairment required for further consideration of permanent total disability benefits. Mr. Cline appealed, arguing that he has met the whole body impairment threshold to be considered for permanent total disability benefits. The West Virginia Office of the Insurance Commissioner argues that Mr. Cline has not met the 50% whole body impairment threshold necessary for further consideration of permanent total disability benefits. On December 31, 2004, Mr. Cline was granted a 3.3% hearing loss award. On September 9, 2005, Mr. Cline was awarded a 16% psychiatric award. On July 28, 2009, Dr. Neal Jewell performed an independent medical exam on Mr. Cline and found 20% whole body impairment for his back and upper extremities. On October 14, 2010, the Permanent Total Disability Reviewing Body recommended denial of Mr. Cline's application due to failure to meet the required level of whole body medical impairment. The Permanent Total Disability Board found that based upon the American Medical Association's Guides to the Evaluation of Permanent Impairment, (4th Edition, 1993), that Mr. Cline had sustained a total of 32% whole person impairment for all of his occupational injuries. On April 8, 2010, the Permanent Total Disability Board specifically recommended a combined 15% whole person impairment for the lumbar spine and cervical spine; 12% whole person impairment for the right hand; 5% psychiatric impairment; and a 4% hearing loss impairment. The Permanent Total Disability Board found that Mr. Cline did not suffer from a medical impairment of at least 50% on a whole body basis and has not sustained a 35% or greater statutory disability, and therefore has failed to meet the required level of whole body medical impairment threshold for further consideration of permanent total disability benefits.

The Office of Judges found that Mr. Cline does not have a combined total of 50% whole body impairment required for further consideration of permanent total disability benefits. The Office of Judges noted that Mr. Cline's evidence was not persuasive in demonstrating that he has at least 50% whole person impairment. The Board of Review reached the same reasoned conclusion. We agree that Mr. Cline has not met the 50% whole body impairment threshold required for further consideration of permanent total disability benefits.

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: September 10, 2013

CONCURRED IN BY:

Justice Robin J. Davis
Justice Margaret L. Workman
Justice Menis E. Ketchum
Justice Allen H. Loughry II

DISQUALIFIED

Chief Justice Brent D. Benjamin