

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

EMERY L. MASSEY,
Claimant Below, Petitioner

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

vs.) No. 11-1720 (BOR Appeal No. 2046170)
(Claim No. 2009051133)

UNITED COAL COMPANY, LLC,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Emery L. Massey, by Reginald D. Henry, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. United Coal Company, LLC, by Bradley A. Crouser, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated November 17, 2011, in which the Board affirmed a July 7, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the claims administrator's June 28, 2010, decision, granting a 2% permanent partial disability award for right carpal tunnel syndrome and 0% permanent partial disability award for left 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. Massey suffered a work-related injury when working as a roof bolter for United Coal Company, LLC. The claim was held compensable for bilateral carpal tunnel syndrome. The Office of Judges reversed the claims administrator's decision and granted a 6% permanent partial disability award, representing 3% for each wrist. On May 17, 2010, Dr. Wahi concluded Mr. Massey had reached maximum medical improvement and had impairments of 2% in the right wrist and 0% in the left wrist. Dr. Walker and Dr. Kominsky concluded that Mr. Massey had a 6% impairment for carpal tunnel syndrome in each wrist, equaling a 12% whole person

impairment. On January 10, 2011, Dr. Condaras concluded Mr. Massey sustained a 3% impairment of carpal tunnel syndrome for each wrist, equaling a 6% whole person impairment.

On appeal, Mr. Massey disagrees and asserts that a preponderance of the evidence establishes that he has a 12% whole person impairment attributable to his bilateral carpal tunnel syndrome, which is supported by Dr. Walker's and Dr. Kominsky's findings. United Coal Company, LLC maintains that Mr. Massey failed to prove by a preponderance of the evidence that he has more than a 6% permanent partial disability as a result of his bilateral carpal tunnel syndrome.

The Office of Judges discredited Dr. Wahi's findings of 2% for the right hand and 0% for the left as being low and not realistic since Mr. Massey continues to have some symptoms in both hands, and neither hand was rated this low by any other examiner. The Office of Judges further determined that Dr. Walker's rating of 12% whole person impairment is too high because Mr. Massey has returned to his pre-injury job of roof bolting with no work restrictions. The Office of Judges relied on Dr. Condaras's findings of 3% impairment for each wrist because he accurately took into account Mr. Massey's limitations, the fact that he has returned to work, and his statements about his symptoms improving considerably after surgery. The Board of Review reached the same reasoned conclusions in its decision of November 17, 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: September 10, 2013

CONCURRED IN BY:

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

DISSENTING:

Justice Margaret L. Workman