

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

BILLY J. BLANKENSHIP,
Claimant Below, Petitioner

FILED
October 3, 2014
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 12-0623 (BOR Appeal No. 2046540)
(Claim No. 2004016035)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER**
Commissioner Below, Respondent

and

STACY EQUIPMENT & REPAIRS, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Billy J. Blankenship, by John C. Blair, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. The West Virginia Office of Insurance Commissioner, by Jon H. Snyder, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated April 24, 2012, in which the Board affirmed an October 12, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's September 10, 2010, decision granting Mr. Blankenship a 9% partial permanent disability award. 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. Blankenship was employed as a heavy equipment operator for Stacy Equipment & Repairs, Inc. on September 24, 2003, when he sustained a sprain/strain to his right shoulder and

neck as a result of falling from excavating equipment. He was diagnosed with a sprain/strain of the right shoulder and neck. An MRI performed on January 21, 2009, showed degenerative disc disease throughout the cervical spine, along with other abnormalities. On September 10, 2010, Mr. Blankenship was granted a 9% permanent partial disability award based upon the findings of Rakesh Wahi, M.D. Mr. Blankenship protested and argued that he was entitled to a 24% permanent partial disability award based upon the opinion of Victor Poletajev, D.C.

The Office of Judges affirmed the claims administrator and held that Mr. Blankenship is entitled to a 9% permanent partial disability award for his injuries sustained on September 24, 2003. The Office of Judges determined that the objective findings of Dr. Wahi and P. B. Mukkamala, M.D., corroborated each other and, therefore, found their opinions more persuasive than Dr. Poletajev. The Office of Judges noted that Dr. Poletajev found significantly higher impairment yet failed to provide any explanation to support his findings. Dr. Poletajev also found objective evidence of radiculopathy, which was not found by either Dr. Wahi or Dr. Mukkamala. The Office of Judges also found that Dr. Poletajev rated the claimant for loss of strength, but made no findings as to why this is a rare case, which is required by the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, (4th Edition, 1993), for the matter to be rated separately.

Because the Office of Judges gave Dr. Poletajev's report less evidentiary weight than the opinions of Dr. Wahi and Dr. Mukkamala, Mr. Blankenship's 9% permanent partial disability award was affirmed. The Board of Review reached the same reasoned conclusions in its decision of April 24, 2012. 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: October 3, 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