

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

FILED
June 27, 2014
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MERRILL HUNT,
Claimant Below, Petitioner

vs.) No. 13-0319 (BOR Appeal No. 2047555)
(Claim No. 2010097461)

SWVA, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Merrill Hunt, by Edwin H. Pancake, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. SWVA, Inc., by Steven K. Wellman, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated February 27, 2013, in which the Board affirmed a July 17, 2012, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's April 25, 2011, decision awarding 4% permanent partial disability. 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. Hunt was employed by SWVA, Inc., at various positions for over thirty years. During his employment, Mr. Hunt underwent several different surgeries to correct various problems in his hands and arms. The claims administrator received Mr. Hunt's application for permanent partial disability and granted him a 4% permanent partial disability award based upon a report submitted by Marsha Bailey, M.D. Dr. Bailey's report found 4% whole person impairment based upon a finding of 43% sensory impairment, with no strength impairment.

Mr. Hunt then submitted an evaluation from Bruce Guberman, M.D. Dr. Guberman found 15% whole person impairment based upon a 40% sensory deficit and 20% strength impairment. Mr. Hunt also visited Jerry W. Scott, M.D. Dr. Scott found 4% whole person impairment based upon a finding of 43% sensory impairment and no strength impairment. Dr. Scott also opined that Dr. Guberman's report was not as reliable as his own or Dr. Bailey's because Dr. Guberman calculated Mr. Hunt's impairment based upon his grip strength measurement, which under the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) should only be used in rare cases where loss of grip strength is not otherwise adequately considered. Dr. Guberman did not provide any explanation as to why he used the alternative measurement. The Office of Judges found Dr. Guberman's report to be unreliable because of an easily identifiable mathematical error and his failure to explain the grip strength test. Furthermore, the Office of Judges noted that Mr. Hunt did not adequately explain how he was cleared by a doctor for employment using his hands and arms in a prolonged fashion and has kept that employment for quite some time.

We agree with the conclusions of the Board of Review and the findings of the Office of Judges. Mr. Hunt has not presented sufficient credible evidence to show he is entitled to more than 4% permanent partial disability. The only evidence of record which tends to show that Mr. Hunt is entitled to more than 4% permanent partial disability is Dr. Guberman's report. Given the plain errors and lack of explanation for alternative measurements contained in Dr. Guberman's report, the Office of Judges was not in error to deem it unreliable.

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: June 27, 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