

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Jason Hill,
Claimant Below, Petitioner

vs.) **No. 22-0377** (BOR Appeal No. 2057520)
(JCN: 2018016794)

Constellium Rolled Products,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Jason Hill appeals the decision of the West Virginia Workers' Compensation Board of Review ("Board of Review"). Respondent Constellium Rolled Products filed a timely response.¹ The issue on appeal is the claims administrator's grant of a 2% permanent partial disability award, which was affirmed by the Workers' Compensation Office of Judges ("Office of Judges") and then affirmed by the Board of Review on April 22, 2022. This Court may not reweigh the evidentiary record, but must give deference to the findings, reasoning, and conclusions of the Board of Review, and when the Board's decision affirms prior rulings by both the Workers' Compensation Commission and the Office of Judges, we may reverse or modify that decision only if it is in clear violation of constitutional or statutory provisions, is clearly the result of erroneous conclusions of law, or is based upon a material misstatement or mischaracterization of the evidentiary record. *See W. Va. Code § 23-5-15(c) & (d)*. We apply a de novo standard of review to questions of law. *See Justice v. W. Va. Off. Ins. Comm'n*, 230 W. Va. 80, 83, 736 S.E.2d 80, 83 (2012). Upon our review, we determine that oral argument is unnecessary and that a memorandum decision affirming the Board of Review's decision is appropriate. *See W. Va. R. App. P. 21*.

Mr. Hill, an equipment operator, injured his left knee when he was walking to his car in a parking lot and slipped and fell on ice. Mr. Hill underwent treatment and physical therapy. Upon discharge from physical therapy, it was noted that Mr. Hill was doing well, his left knee flexion was 138 degrees, and his extension had improved to 0 degrees. Prasadarao Mukkamala, M.D., performed an independent medical evaluation of Mr. Hill in which he found on examination that Mr. Hill had flexion to 130 degrees and concluded that he had no permanent impairment due to the compensable injury. Following Dr. Mukkamala's report, displaced bicondylar fracture of the left tibia was added to the claim as a compensable condition. Dr. Mukkamala therefore performed a second independent medical evaluation in which he considered both the compensable left knee sprain and left ankle lateral tibial plateau fracture. On examination, Dr. Mukkamala found that left

¹Petitioner, Jason Hill, is represented by Edwin H. Pancake, and respondent, Constellium Rolled Products, is represented by Tracy B. Eberling.

and right knee extension was full to neutral. Flexion was carried out to 130 degrees, and Dr. Mukkamala noted that an MRI showed a 2.5 millimeter displacement. Dr. Mukkamala assessed 2% permanent impairment due to the compensable injury. The claims administrator granted a 2% permanent partial disability award based on Dr. Mukkamala's report. Mr. Hill protested the decision.

Bruce Guberman, M.D., performed an independent medical evaluation in which he noted that an x-ray showed a small joint effusion. On examination, Dr. Guberman found 122 degrees of flexion and 6 degrees of extension in the left knee. He assessed 4% impairment for abnormalities in range of motion flexion and extension. Dr. Guberman noted that Mr. Hill had a flexion contracture and recommended an additional 2% permanent partial disability award above what Mr. Hill was previously granted.

In its October 29, 2021, order, the Office of Judges affirmed the claims administrator's grant of a 2% permanent partial disability award. The Office of Judges agreed with the employer's argument that Dr. Mukkamala provided the most reliable report of record and that his report was supported by the physical therapy treatment notes. The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its order on April 21, 2022.

On appeal, petitioner argues in a single assignment of error that the Board of Review committed reversible error in affirming the Office of Judges' order in light of the reliable medical evidence showing that Mr. Hill has 4% impairment as a result of his compensable injury. After review, we agree with the reasoning and conclusions of the Office of Judges as affirmed by the Board of Review. The most reliable impairment assessment of record is that of Dr. Mukkamala. His range of motion measurements were valid and supported by Mr. Hill's physical therapy treatment notes. Dr. Guberman's report is less reliable because his active extension measurements are not supported by any other evaluation of record. We agree with the Office of Judges and Board of Review that Mr. Hill has been fully compensated by his 2% permanent partial disability award.

Affirmed.

ISSUED: January 25, 2024

CONCURRED IN BY:

Chief Justice Tim Armstead
Justice Elizabeth D. Walker
Justice John A. Hutchison
Justice William R. Wooton
Justice C. Haley Bunn