

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Murray American Energy, Inc.,
Employer Below, Petitioner

vs.) **No. 22-0394** (BOR Appeal No. 2057530)
(JCN: 2019021823)

John Tedrow,
Claimant Below, Respondent

MEMORANDUM DECISION

Petitioner Murray American Energy, Inc., appeals the decision of the West Virginia Workers' Compensation Board of Review ("Board of Review"). Respondent John Tedrow filed a timely response.¹ The issue on appeal is the claims administrator's decision granting no permanent partial disability award, which was reversed by the Workers' Compensation Office of Judges ("Office of Judges"). The Office of Judges instead granted a 12% permanent partial disability award, which was affirmed by the Board of Review on April 21, 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 effectively represents a reversal of a prior order of either the Workers' Compensation Commission or 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 so clearly wrong based upon the evidentiary record that even when all inferences are resolved in favor of the Board's findings, reasoning, and conclusions, there is insufficient support to sustain the decision. *See* W. Va. Code §§ 23-5-15(c) & (e). 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. Tedrow, a roof bolter, was injured while working in respondent's mine in 2019 when a rock fell and struck his head. The claim was held compensable for right shoulder and neck strains, as well as an unspecified head injury. Prasadarao Mukkamala, M.D., performed an independent medical evaluation and completed a report in August 2019 in which he found that Mr. Tedrow had reached maximum medical improvement and had no cervical spine impairment. He noted that he was unable to obtain valid cervical range of motion measurements after three attempts. Dr.

¹Petitioner, Murray American Energy, Inc., is represented by Aimee M. Stern, and respondent, John Tedrow, is represented by J. Thomas Greene Jr. and T. Colin Greene.

Mukkamala also found that Mr. Tedrow had no permanent right shoulder impairment. The claims administrator granted no permanent partial disability award.

Bruce Guberman, M.D., performed an independent medical evaluation and completed a report in which he noted that Mr. Tedrow had reached maximum medical improvement and fell under Category II-B from Table 75 of the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) ("AMA *Guides*") for 4% cervical impairment. He also found 4% impairment for range of motion loss for a total of 8% cervical spine impairment. For the right shoulder, Dr. Guberman found 7% upper extremity impairment, which converted into 4% whole person impairment. Dr. Guberman's total, combined impairment rating for the compensable injury was 12%.

The Office of Judges reversed the claim's administrator's decision granting no permanent partial disability and instead granted a 12% permanent partial disability award. It found that Dr. Guberman's evaluation was more reliable than that of Dr. Mukkamala because Dr. Guberman was able to obtain valid, reproducible range of motion measurements for the right shoulder, whereas Dr. Mukkamala did not. The Board of Review affirmed the Office of Judges' order.

On appeal, petitioner argues that the Board of Review erred when it accepted the Office of Judges' factual finding that Dr. Guberman's report provided the most reliable evidence of petitioner's impairment. After review, we agree with the reasoning and conclusions of the Office of Judges as affirmed by the Board of Review. Dr. Guberman provided the most thorough and reliable report of record. Dr. Guberman's range of motion measurements met the validity criteria of the AMA *Guides* for each movement tested, while Dr. Mukkamala's testing only met the validity criteria for cervical rotation. His cervical flexion, extension, right lateral flexion, and left lateral flexion measurements were invalid. As the Office of Judges noted, Dr. Mukkamala did not perform a full examination because, per the AMA *Guides*, he could have measured range of motion up to six times in order to obtain valid results. Dr. Mukkamala only measured three times before concluding that the measurements were invalid. The Office of Judges and Board of Review were correct to conclude that Dr. Guberman's finding of 12% impairment was the most reliable assessment of Mr. Tedrow's impairment.

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