

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Charles Workman,
Claimant Below, Petitioner

v.) **No. 22-617** (BOR Appeal No. 2057790)
(JCN: 2015003864)

Patriot Coal Corporation,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner, Charles Workman appeals the decision of the West Virginia Workers' Compensation Board of Review ("Board of Review"). Respondent, Patriot Coal Corporation filed a timely response.¹ The issue on appeal is the amount of Mr. Workman's permanent partial disability. The claim administrator granted Mr. Workman a 13% permanent partial disability award on April 11, 2018. The Workers' Compensation Office of Judges ("Office of Judges") affirmed the claim administrator's decision on December 7, 2021. The order of the Office of Judges was affirmed by the Board of Review on June 23, 2022. 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. Workman was employed as an underground coal miner on August 5, 2014, when he suffered severe injuries in the course of his employment due to a crush injury to his left lower extremity. As a result of the injury, Mr. Workman sustained comminuted fractures of his lower leg and foot. To address these fractures, he underwent multiple surgeries which were needed to provide internal fixation of the bones. The claim administrator referred Mr. Workman to Prasadarao B. Mukkamala, M.D., for an independent medical evaluation on March 16, 2018. Dr. Mukkamala determined that Mr. Workman had soft tissue injuries to the right hip and right wrist that had resolved. The crush injury that the claimant sustained resulted in a comminuted fracture of the distal part of the tibia and fibula, as well as fractures of the left navicular, left cuboid, and second, third, and fourth metatarsals. Dr. Mukkamala noted that the tibia and fibula fractures were treated with internal fixation. Using the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993), Dr. Mukkamala found that Mr. Workman had a moderate degree of limitation of the left ankle and the left hindfoot, with a mild limitation of range of motion of the toes. Dr. Mukkamala opined 13% whole person impairment for the compensable injury.

¹ Petitioner, Charles Workman, is represented by Edwin H. Pancake, and respondent, Patriot Coal Corporation, is represented by Jane Ann Pancake and Jeffrey B. Brannon.

Based upon Dr. Mukkamala's rating, the claim administrator awarded Mr. Workman 13% in permanent partial disability benefits on April 11, 2018. Mr. Workman protested the claim administrator's order.

Mr. Workman was evaluated by Bruce A. Guberman, M.D., for an independent medical evaluation on May 30, 2018. The impression was a crush injury to the left leg with multiple fractures. Mr. Workman was also found to have chronic posttraumatic strain of the right hip and the right wrist. Dr. Guberman determined that Mr. Workman had reached maximum medical improvement and that additional treatment and/or diagnostic testing would not improve his impairment related to the compensable injury. Dr. Guberman calculated Mr. Workman's impairment to be 34% whole person impairment after finding 30% impairment for the left lower extremity, 2% impairment for the right hip injury, and 4% impairment for the right wrist injury.

The employer then referred Mr. Workman to Marsha L. Bailey, M.D., who conducted an independent medical evaluation on March 25, 2019. Dr. Bailey agreed with Dr. Mukkamala's assessment and noted that Dr. Guberman rated noncompensable body parts in his report. Dr. Bailey determined that Mr. Workman had 12% impairment for his left lower extremity, with the understanding that Mr. Workman's compensable diagnosis is only for a fracture of the left lower leg. Additionally, Dr. Bailey opined that Dr. Guberman used an Ankylosis Model, which she believed was inappropriate, inaccurate, and contradictory to the physical examination findings of the treating orthopedist. Dr. Bailey concluded that Dr. Guberman "grossly overestimated Mr. Workman's compensable impairment and his report should be considered invalid."

In addition to Dr. Bailey, the employer also referred Mr. Workman to David Soulsby, M.D., an orthopedic surgeon, for an independent medical evaluation. In his report dated October 30, 2019, Dr. Soulsby opined that Mr. Workman had 31% whole person impairment, which included 8% impairment for the left knee; 12% impairment for the left ankle; 5% for the left hind foot; and 10% for the peroneal nerve function. Dr. Soulsby disagreed with Dr. Guberman's opinion concerning Mr. Workman's degree of impairment because Dr. Guberman included ratings for diagnoses that had not been judged to be part of the claim.

On December 7, 2021, the Office of Judges affirmed the April 11, 2018, order of the claim administrator. The Office of Judges noted that the compensability order was not of record, but reasoned that Mr. Workman's compensable components involved fractures to the left lower leg. The Office of Judges found that Dr. Guberman and Dr. Soulsby considered components that were not part of the claim, and as a result, their reports were not as credible for determining Mr. Workman's permanent impairment. The Office of Judges found that the evaluations of Dr. Mukkamala and Dr. Bailey were both valid. Given the statutory definition of weight of the evidence and both reports being valid, the report most favorable to the claimant was accepted,²

² West Virginia Code § 23-4-1g(a) provides, in pertinent part, as follows:

[The] resolution of any issue raised in administering this chapter shall be based on a weighing of all evidence pertaining to the issue and a finding that a preponderance of the evidence supports the chosen manner of resolution. The process of weighing

and Mr. Workman was determined to have 13% whole person impairment based upon Dr. Mukkamala's assessment. On June 23, 2022, the Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed the decision.

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. of Ins. Comm'n*, 230 W. Va. 80, 83, 736 S.E.2d 80, 83 (2012).

On appeal, Mr. Workman argues that out of the four qualified physicians who rendered impairment ratings, the opinion of Dr. Soulsby, a board-certified orthopedic surgeon, should be given the greatest amount of weight. In his report, Dr. Soulsby assessed 31% for the left lower extremity, and similarly, Dr. Guberman opined that there is 30% impairment. Mr. Workman asserts that the primary difference among the medical reports is that Drs. Guberman and Soulsby included ratings for the impairment range of motion to the claimant's knee, which was improperly excluded by Drs. Mukkamala and Bailey, since the left knee had range of motion impairment resulting from the August 5, 2014, injury, and subsequent surgeries.

After review, we agree with the reasoning and conclusions of the Office of Judges as affirmed by the Board of Review. In the absence of a compensability order, the Office of Judges concluded that the components in the claim are fractures to Mr. Workman's left lower leg, and that Drs. Mukkamala and Bailey were the only two physicians who limited their assessments of impairment to the accepted compensable conditions in the claim. Because Drs. Guberman and Soulsby both included noncompensable body parts in their whole person impairment ratings, the Office of Judges found that their reports were not as credible for the purpose of determining permanent impairment. After applying West Virginia Code § 23-4-1g(a), the Office of Judges determined that Mr. Workman was entitled to the impairment rating opined by Dr. Mukkamala. The Board of Review did not err in affirming the decision of the Office of Judges. Therefore, the Board of Review's order dated June 23, 2022, is affirmed.

evidence shall include, but not be limited to, an assessment of the relevance, credibility, materiality, and reliability that the evidence possesses in the context of the issue presented. Under no circumstances will an issue be resolved by allowing certain evidence to be dispositive simply because it is reliable and is most favorable to a party's interests or position. If, after weighing all of the evidence regarding an issue in which a claimant has an interest, there is a finding that an equal amount of evidentiary weight exists favoring conflicting matters for resolution, the resolution that is most consistent with the claimant's position will be adopted.

Affirmed.

ISSUED: March 20, 2024

CONCURRED IN BY:

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