

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

**GRANVILLE SESCO,
Claimant Below, Petitioner**

v.) No. 23-ICA-489 (JCN: 2018015767)

**BROOKS RUN SOUTH MINING, LLC C/O ANR,
Employer Below, Respondent**

**FILED
March 25, 2024**

C. CASEY FORBES, CLERK
INTERMEDIATE COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Granville SESCO appeals the October 17, 2023, order of the Workers' Compensation Board of Review ("Board"). Respondent Brooks Run South Mining, LLC c/o ANR ("Brooks Run") timely filed a response.¹ Mr. SESCO did not file a reply. The issue on appeal is whether the Board erred in affirming the claim administrator's order, which granted Mr. SESCO a 3% permanent partial disability ("PPD") award.

This Court has jurisdiction over this appeal pursuant to West Virginia Code § 51-11-4 (2022). After considering the parties' arguments, the record on appeal, and the applicable law, this Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision affirming the Board's order is appropriate under Rule 21 of the Rules of Appellate Procedure.

Mr. SESCO, a former electrician in the coal mines, was experiencing bilateral arm pain with numbness and tingling in both hands and underwent an EMG and Nerve Conduction Study on November 28, 2017. The results indicated median neuropathy across the right wrist and left wrist affecting the sensory and motor fibers consistent with bilateral carpal tunnel syndrome ("CTS"). The studies did not reveal any evidence of acute or chronic cervical radiculopathy. On December 18, 2017, Mr. SESCO filed an Employees' and Physicians' Report of Occupational Injury, alleging an occupational disease of the bilateral wrists with a date of last exposure of November 28, 2017. The claim administrator initially rejected the claim, but the Office of Judges ("OOJ") reversed the order on January 16, 2019, and held the claim compensable for bilateral CTS. The Board affirmed the OOJ's order on July 19, 2019.

On October 11, 2021, Mr. SESCO underwent a left open carpal tunnel release which was performed by Gordon N. Holen, D.O. Mr. SESCO attended a follow-up appointment

¹ Mr. SESCO is represented by Reginald D. Henry, Esq., and Lori J. Withrow, Esq. Brooks Run is represented by Sean Harter, Esq.

with Megan Dincher, PA-C, on October 28, 2021. Mr. SESCO reported significant improvement in his left hand and noted that he had not had any pain, numbness, or tingling following his surgery. Ms. Dincher examined Mr. SESCO and found that he had good range of motion in both wrists with flexion and extension and good grip strength bilaterally.

Mr. SESCO underwent a right carpal tunnel release procedure on December 27, 2021. On January 11, 2022, Mr. SESCO followed up with Ms. Dincher, and he reported great improvement in both hands following his surgeries. Upon examination, Ms. Dincher noted good range of motion in both wrists with flexion and extension and good grip strength bilaterally.

When the time came to determine whether Mr. SESCO suffered any permanent impairment related to his compensable bilateral CTS diagnoses, he underwent five independent medical evaluations (“IME”). Mr. SESCO was first examined by Syam Stoll, M.D., on March 1, 2022. Mr. SESCO reported no current issues and stated that he had near immediate relief in his hands following the surgeries. He reported mild distal tip tenderness and tenderness at the scars, but stated he is no longer dropping objects or waking up at night due to his hands. Using the American Medical Association’s *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) (“*Guides*”), Dr. Stoll assessed 0% upper extremity impairment (“UEI”) for range of motion measurements, 2% UEI for sensory deficits, and 0% UEI for motor deficits related to the right wrist. Dr. Stoll found no other impairment for the right upper extremity, and he converted the 2% UEI assessed for sensory deficits to 1% whole person impairment (“WPI”) for the right wrist. For the left wrist, Dr. Stoll assessed 2% UEI for range of motion deficits in flexion measurements, 2% UEI for sensory deficits, and 0% for motor deficits. Dr. Stoll found no other ratable impairment in the left upper extremity. He then converted the 4% UEI to 2% WPI for the right wrist. Dr. Stoll combined 2% WPI for the left wrist and 1% WPI for the right wrist to total 3% WPI, which was his final assessment for the compensable injury. By order dated March 14, 2022, the claim administrator granted Mr. SESCO a 3% PPD award in accordance with Dr. Stoll’s recommendation.

Mr. SESCO next underwent an IME performed by Bruce Guberman, M.D., on May 4, 2022. Mr. SESCO reported that his symptoms improved after the surgeries but never completely resolved. Mr. SESCO stated that he continued to have numbness and tingling in certain fingers and weakness in both hands. Using the *Guides*, Dr. Guberman assessed 11% UEI for sensory deficit and 0% UEI for motor deficit in each wrist, which combined for a total of 11% UEI. Dr. Guberman then converted 11% UEI to 7% WPI. Applying Rule 20, Dr. Guberman adjusted his rating to 6% WPI for each wrist, for a total of 12% WPI—his final recommendation.

Mr. SESCO’s third IME was performed by Robert Walker, M.D., on May 20, 2022. Mr. SESCO reported persistent numbness and tingling in certain fingers and reduced grip strength. Using the *Guides*, Dr. Walker assessed 9.5% UEI for sensory deficits and 2.5%

UEI for motor deficits. Dr. Walker combined the results to reach 12% UEI, which he then converted to 7% WPI. After applying Rule 20, Dr. Walker adjusted the rating to 6% WPI in total for the right wrist. Dr. Walker then assessed the left wrist and found the same impairment as in the right. Combining 6% WPI for the right wrist with 6% WPI for the left wrist resulted in 12% WPI, which was Dr. Walker's final recommendation.

On September 28, 2022, Mr. Sesco underwent his fourth IME, which was performed by Prasadarao Mukkamala, M.D. Dr. Mukkamala assessed 10% UEI for sensory deficits and 0% UEI for motor deficits in each wrist. Dr. Mukkamala converted the 10% UEI to 2% WPI for each wrist. However, Dr. Mukkamala apportioned 1% WPI for each wrist to non-occupational risk factors including obesity, leaving 1% WPI attributable to the compensable injury in each wrist. In sum, Dr. Mukkamala recommended 2% WPI and noted that, because Mr. Sesco had already received a 3% PPD award, he had been fully compensated for his compensable injury. Dr. Mukkamala disagreed with the opinions of Drs. Guberman and Walker, noting that they reported symptoms that were contradicted by Ms. Dincher's clinical notes. Dr. Mukkamala also opined that Drs. Guberman and Walker failed to apportion for non-occupational risk factors.

Mr. Sesco underwent his fifth and final IME performed by David Soulsby, who issued a report dated May 23, 2023. Dr. Soulsby opined that the carpal tunnel release surgeries were partly successful in that Mr. Sesco saw improvement but stated that they had not completely resolved the symptoms. Using the *Guides*, Dr. Soulsby assessed 2% UEI due to restricted extension and 3% UEI due to restricted flexion in the right wrist. Dr. Soulsby also found 2% UEI due to sensory deficits in the right wrist. However, Dr. Soulsby found diminished sensation in the ulnar nerve distribution, which he opined suggested the presence of neuropathy or possibly cervical radiculopathy. As such, Dr. Soulsby apportioned half of the impairment, attributing half of the sensory deficits to CTS. Dr. Soulsby combined the UEI to reach 6% UEI and then converted the rating to 4% WPI. For the left wrist, Dr. Soulsby found 3% UEI related to restricted flexion and 2% UEI to sensory deficits, which combined to total 5% UEI. Dr. Soulsby converted the UEI to reach 3% WPI. Combining the 4% WPI for the right wrist with 3% WPI for the left wrist, Dr. Soulsby reached his final recommendation of 7% WPI.

Dr. Soulsby opined that the ratings of Drs. Guberman and Walker were excessive and represented the maximum amount permitted by West Virginia Code for bilateral CTS. Dr. Soulsby stated that, in his opinion, such a rating was only justified when objective findings of actual maximum impairment were present, which was not the case here. Dr. Soulsby noted that there were no objective findings of atrophy or weakness of the abductor pollicis brevis, substantial loss of motion, or severe impairment of sensation to justify such a high impairment rating. Dr. Soulsby opined that, while Mr. Sesco did not receive excellent results after his surgery, his findings were not the worst he had observed following CTS surgery.

By order dated October 17, 2023, the Board affirmed the claim administrator's order granting Mr. Sesco a 3% PPD award in accordance with Dr. Stoll's recommendation. The Board found that Mr. Sesco failed to prove by a preponderance of the evidence that he is entitled to more than 3% PPD. The Board disregarded Dr. Guberman's report as unpersuasive because he found 11% UEI for sensory loss, which it found to be inconsistent with the other evaluations. The Board next disregarded Dr. Walker's report because he was the only evaluator to find motor deficits.

The Board noted that the only other evaluator to find more than 3% impairment was Dr. Soulsby. However, the Board found that his report was also not in line with the weight of the medical evidence as he was the only evaluator to find range of motion impairment in Mr. Sesco's right wrist. The Board noted that, not only was this not in line with the findings of the other IME evaluators, but it also contradicted Ms. Dincher's clinical findings which indicate that Mr. Sesco had good range of motion in both wrists post-surgery. Given the foregoing, the Board concluded that there was no medical evidence to support a PPD award higher than the 3% PPD award already granted and, as such, affirmed the claim administrator's order. Mr. Sesco now appeals.

Our standard of review is set forth in West Virginia Code § 23-5-12a(b) (2022), in part, as follows:

The Intermediate Court of Appeals may affirm the order or decision of the Workers' Compensation Board of Review or remand the case for further proceedings. It shall reverse, vacate, or modify the order or decision of the Workers' Compensation Board of Review, if the substantial rights of the petitioner or petitioners have been prejudiced because the Board of Review's findings are:

- (1) In violation of statutory provisions;
- (2) In excess of the statutory authority or jurisdiction of the Board of Review;
- (3) Made upon unlawful procedures;
- (4) Affected by other error of law;
- (5) Clearly wrong in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Duff v. Kanawha Cnty. Comm'n, 247 W. Va. 550, 555, 882 S.E.2d 916, 921 (Ct. App. 2022).

On appeal, Mr. Sesco argues that the Board erred in finding that he had failed to prove that he was entitled to more than a 3% PPD award. Mr. Sesco argues that three out of the five evaluating physicians found more than 3% WPI due to the compensable injury, including Dr. Soulsby, who was retained by Brooks Run to provide an opinion. According

to Mr. SESCO, the Board erred in disregarding Dr. Soulsby's report on the basis that it allegedly conflicted with Ms. Dincher's clinical notes. Mr. SESCO contends that, although he did have improvement immediately following his surgery, his symptoms worsened afterward, which was noted by Dr. Stoll, Dr. Guberman, Dr. Walker, and Dr. Soulsby.

Mr. SESCO claims that the Board also erred in disregarding Dr. Guberman's report simply because of his sensory loss impairment rating. Mr. SESCO contends that the record supports that he has numbness and tingling in his hands, and Drs. Guberman, Walker, Soulsby, and Stoll all reported that Mr. SESCO frequently dropped things and had weakened grip strength. Similarly, Mr. SESCO argues that the Board erroneously dismissed Dr. Walker's report simply because he was the only evaluator to find motor deficits, again noting that he has difficulty gripping things and can no longer perform certain hobbies such as fishing and hunting. Mr. SESCO concludes that because the majority of the evaluators found more than 3% impairment and their reasoning is supported by the evidence of record, the Board was clearly wrong in affirming the claim administrator's order.

We disagree. Upon review, we find that Mr. SESCO failed to demonstrate that the Board's findings and conclusions were clearly wrong. The Supreme Court of Appeals of West Virginia has held that "[t]he 'clearly wrong' and the 'arbitrary and capricious' standards of review are deferential ones which presume an agency's actions are valid as long as the decision is supported by substantial evidence or by a rational basis." Syl. Pt. 3, *In re Queen*, 196 W. Va. 442, 473 S.E.2d 483 (1996). Moreover, "[A] reviewing court may not overturn a finding simply because it would have decided the case differently, and it must affirm a finding if the [lower tribunal's] account of the evidence is plausible in light of the record viewed in its entirety." Syl. Pt. 1, in part, *In Re Tiffany Marie S.*, 196 W. Va. 223, 470 S.E.2d 177 (1996)." Syl. Pt. 5, *Jarrell v. City of Nitro*, 244 W. Va. 666, 856 S.E.2d 625 (2021). With this deferential standard in mind, we are unable to conclude that the Board erred in awarding Mr. SESCO a 3% PPD award in accordance with Dr. Stoll's recommendation.

Here, the Board disregarded three of the IME reports due to its conclusion that some portion of their respective analysis represented an outlying opinion unsupported by the evidence of record. This is simply one method among many of analyzing the evidence presented. We cannot say that the Board clearly erred in its determination, and this Court may not overturn a finding simply because it would have decided the case differently. Mr. SESCO has failed to sufficiently cite any portion of the Board's order establishing that its conclusion was clearly wrong and, as such, we give deference to its findings. *See W. Va. Off. of Ins. Comm'r v. Johns*, No. 21-0811, 2023 WL 3968686, at *3 (W. Va. June 13, 2023) (memorandum decision) ("This Court may not reweigh the evidentiary record, but must give deference to the findings, reasoning, and conclusions of the Board of Review[.]").

Accordingly, we affirm the Board's October 17, 2023, order granting Mr. SESCO a 3% PPD award in accordance with Dr. Stoll's recommendation.

Affirmed.

ISSUED: March 25, 2024

CONCURRED IN BY:

Chief Judge Thomas E. Scarr

Judge Charles O. Lorensen

Judge Daniel W. Greear