

21-0944



IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Charleston

CHARLES DELBERT,

Claimant/Respondent,

v.

FILE COPY

MARSHALL COUNTY COAL RESOURCES, INC.

Employer/Petitioner

SUPREME COURT NO: Unassigned

JCN: 2014014137

BOR APPEAL NO: 2056410

**DO NOT REMOVE
FROM FILE**

FROM THE WORKERS' COMPENSATION BOARD OF REVIEW

EMPLOYER'S PETITION FOR APPEAL

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EMPLOYER'S PETITION FOR APPEAL

I. KIND OF PROCEEDING AND NATURE OF RULING

This claim comes before this Honorable Court pursuant to the Employer's Petition for Appeal from the October 22, 2021 Order of the Worker's Compensation Board of Review (Exhibit A), affirming the Office of Judges' February 4, 2021 Order (Exhibit B), which reversed the Claims Administrator's September 19, 2019 order (Exhibit C), and granted the Claimant a permanent total disability award.

II. STATEMENT OF FACTS

The Claimant/Respondent, Charles Delbert ("Claimant" or "Mr. Delbert"), was employed at Consolidation Coal until his retirement in 2009. He filed an application for a Permanent Total Disability Award in the above-referenced claim on August 13, 2014. Mr. Delbert indicated that

he was 60 years old, and was receiving employer-funded retirement benefits, as well as Social Security disability benefits. By order dated September 15, 2014, the Claims Administrator approved Mr. Delbert's application and referred him to the Permanent Total Disability Review Board. (See Exhibit D, 8/13/14 PTD Application and Exhibit E, Claims Administrator's 9/15/14 order, filed by the Employer below.)

Mr. Delbert underwent an independent psychiatric examination on January 23, 2015. Psychological testing conducted by Maria Moran, Ph.D., as part of the examination revealed that Mr. Delbert was functioning in the high average range of overall intellect. He reported finishing high school and attending one year of college prior to dropping out of school to get married. Dr. Kari-Beth Law, who conducted the psychiatric examination, noted that Mr. Delbert's vocabulary usage was above average, and that he used medical jargon regularly and properly, including "chronic traumatic encephalopathy," "muscle guarding," and "radiculopathy." She noted that Mr. Delbert utilized a significant degree of intellectualization, and he did not evidence gross cognitive impairment. (See Exhibit F, Dr. Law's 1/23/15 IME report and Exhibit G, Dr. Moran's 1/23/15 psychological evaluation, filed by the Employer.)

A functional capacity evaluation was conducted by Mark Mascio, LPT, on February 19, 2015. Mr. Mascio noted that while Mr. Delbert appeared to give full maximal effort to the testing, he may be able to do more than he states or perceives. Mr. Mascio concluded that Mr. Delbert was able to perform work in the light physical demand level for 8 hours per day. (See Exhibit H, 2/19/15 FCE report, filed by the Employer below.)

Erin Saniga, M.Ed., CRC, LPC, conducted a vocational rehabilitation evaluation of Mr. Delbert on May 15, 2015. Ms. Saniga took a detailed report from Mr. Delbert regarding his compensable injuries, current symptoms, non-compensable medical conditions, education, and

vocational history. Mr. Delbert reported that he retired from coal mining with a regular pension in 2009 after 30 years of service. Mr. Delbert advised that he had the following general skills and abilities: typing, computer (e-mail, internet, Pages, Excel), cash register (at his father's bar), supervisor, and automotive experience/tools (used to change his own oil). Ms. Saniga conducted a transferable skills analysis and identified the following skills associated with job positions Mr. Delbert previously held: operation and control, critical thinking, repairing, judgment and decision making, complex problem solving, coordination, quality control analysis, reading comprehension, management of personnel resources, persuasion, operation monitoring, equipment maintenance, troubleshooting, monitoring, active listening, speaking, time management, and social perceptiveness. She identified the following abilities associated with job positions Mr. Delbert previously held: problem sensitivity, oral comprehension, selective attention, information ordering, written comprehension, speech recognition, deductive reasoning, oral expression, visualization, inductive reasoning, written expression and category flexibility.

Ms. Saniga used the Occupational Access System (OASYS) program to identify residual employment options for Mr. Delbert, taking into consideration his past work history, his physical capabilities, and the results of the transferrable skills analysis. The OASYS program identified 63 occupational matches. Ms. Saniga then conducted a labor market survey within a 75 mile radius of Mr. Delbert's home, which identified 29 available positions for which Mr. Delbert would be considered qualified, or could become qualified upon completion of on-the-job training or a short term training program designed to enhance his computer and typing skills. Ms. Saniga noted that Mr. Delbert would be an excellent candidate for on-the-job training, as "he has, over the course of his career, demonstrated the ability to learn new skills via training received on the job." She identified some available classes Mr. Delbert could take at Belmont College or West Virginia

Northern Community College to improve his computer skills and increase his return-to-work options. Ms. Saniga concluded that Mr. Delbert is not permanently and totally disabled as a result of his compensable injuries because there are multiple positions located within a 75 mile radius of his home which are open and available to him. (See Exhibit I, Ms. Saniga's 5/15/15 Vocational Rehabilitation Evaluation, filed by the Employer below.)

Dr. Christi Cooper-Lehki conducted an independent psychiatric evaluation on Mr. Delbert on April 26, 2017. She noted that: "Mr. Delbert has voiced to several people that he has CTE or chronic traumatic encephalopathy. He told me at the start of this evaluation that he had it due to several head injuries he sustained in the coal mines; he never lost consciousness and did not have amnesia but said that he hit his head 'hard enough to see stars a few times.'" However, Dr. Cooper-Lehki noted that Mr. Delbert had undergone psychological testing on three occasions and there was no suggestion of a brain injury, nor any recommendations for further neuropsychological testing. Dr. Cooper-Lehki concluded that objective data did not support the presence of a serious neurocognitive disorder. Mr. Delbert's performance on the mental status exam demonstrated linear and well-organized thought processes; his concentration was subjectively impaired but objectively intact; his immediate and short-term recall were intact; his memory testing was intact; he scored 29/30 on the mini-mental status exam, indicating the absence of significant cognitive impairment; his fund of knowledge was appropriate for his educational background; he displayed intact ability for abstract thought; his judgment was good; and his intelligence was above-average based upon language vocabulary skills. Psychological testing conducted by Dr. Kirk Bryant as part of Dr. Cooper-Lehki's examination revealed a superior intellect with a strength in working memory and relative weakness in processing speed, although Dr. Bryant noted that Mr. Delbert's

processing speed remained in the average range. (See Exhibit J, Dr. Cooper-Lehki's 4/26/17 report & Exhibit K, Dr. Bryant's 4/28/17 report, filed by the Employer below.)

Mr. Delbert underwent another Functional Capacity Evaluation on October 23, 2018 at Wheeling Hospital. He demonstrated the ability to perform sedentary physical demand level work for 40 hours per week, 8 hours per day. (See Exhibit L, 10/23/18 Wheeling Hospital FCE report, filed by the Employer below.)

Ms. Saniga completed an updated PTD Vocational Rehabilitation Evaluation of Mr. Delbert on November 30, 2018. She again met with Mr. Delbert, who reported that he continued to engage in the following activities: mowing the lawn using a riding mower for 30 – 45 minutes at a time, driving his mother-in-law to appointments, fixing simple meals, reading emails, and doing laundry. He endorsed the following general skills: typing, computer (e-mail, internet, Pages, Excel), cash register (at his father's bar), office machines (copy, scan, fax), supervisor, and automotive experience/tools (used to change his own oil). Ms. Saniga noted that Mr. Delbert's work history included unskilled, semi-skilled, and skilled positions. She indicated that the following skills are associated with the positions Mr. Delbert has held: operation and control, critical thinking, repairing, judgment and decision making, complex problem solving, coordination, quality control analysis, reading comprehension, management of personnel resources, persuasion, operation monitoring, equipment maintenance, troubleshooting, monitoring, active listening, speaking, time management, and social perceptiveness. Ms. Saniga identified the following abilities associated with the positions Mr. Delbert has held: problem sensitivity, oral comprehension, selective attention, information ordering, written comprehension, speech recognition, deductive reasoning, oral expression, visualization, inductive reasoning, written expression, and category flexibility. Ms. Saniga completed a transferrable skills analysis

and used the OASYS program to identify the following residual employment options for Mr. Delbert, taking into consideration his past work history and his physical capabilities: Manager, Traffic II; Classification Clerk; Letter-of-Credit Clerk; Insurance Clerk; Reader; Referral Clerk; Temporary Help Agency; Charter; Matrix Inspector; Election Clerk; and Call-Out Operator. She completed a labor market survey, noting that she considered positions based upon their compatibility with Mr. Delbert's pre-injury employment or the availability of training, as well as the physical nature of the position, and she indicated that entry-level positions outside Mr. Delbert's specific work experience were considered. Ms. Saniga identified the following sedentary job openings in Mr. Delbert's geographic location for which he would be considered qualified or could become qualified upon completion of on-the-job training or a short term training program designed to enhance his computer and typing skills: registration clerk, receptionist (multiple positions), administrative assistant, and front office coordinator/receptionist. Ms. Saniga stated that Mr. Delbert would be an excellent candidate for participation in a brief, non-degree program focusing on computer/keyboarding skills, and she outlined several such programs which are available at West Virginia Northern Community College.

Ms. Saniga noted that Mr. Delbert had previously been referred for vocational evaluation and possible vocational services in January of 2008, and that he advised Ms. Saniga during the 2008 vocational interview that he only needed to work 1 ½ more years to be eligible for regular retirement, and he expressed a strong desire to return to work so he could retire through the UMWA. Ms. Saniga stated "given that Mr. Delbert did return to work in 2008 and retired in 2009, it would appear that he achieved his goal." Ms. Saniga noted that Mr. Delbert performed in the light physical demand level during the 2015 FCE, while he performed in the sedentary physical demand level during the 2018 FCE, and she stated "given that there was no known injury in the 3

½ years between the evaluations, one is left to question whether the decline in performance is the natural result of living a more sedentary lifestyle in one’s retirement years.”

Ms. Saniga again noted that Mr. Delbert would be an excellent candidate for positions requiring on-the-job training, because “he has, over the course of his career, demonstrated the ability to learn new skills via training received on the job.” She indicated that participation in a brief, non-degree program focusing on computer/keyboarding skills could be of benefit to improve Mr. Delbert’s computer skills and as a result, increase his return to work options. She concluded that Mr. Delbert was not permanently and totally disabled as a result of his compensable injuries because multiple positions located within a 75 mile radius of his home for which he would be considered qualified, or could become qualified, have been identified as being open and available to him. Ms. Saniga recommended vocational rehabilitation services to assist Mr. Delbert with identifying appropriate employment options if he is interested in pursuing a return to work. (See Exhibit M, Ms. Saniga’s 11/30/18 vocational rehabilitation report, filed by the Employer below.)

By Order dated July 6, 2018, the Administrative Law Judge found that Mr. Delbert met the 50% whole body medical impairment threshold required for consideration of a PTD award. (See Exhibit N, Claims Administrator’s 8/1/18 Acknowledgment of ALJ’s 7/6/18 order, filed by the Employer below.)

On March 11, 2019, the Permanent Total Disability Review Board issued its Initial Recommendations regarding whether Mr. Delbert is capable of engaging in substantial gainful activity. The Board noted that the evidence demonstrates that Mr. Delbert completed one to two years of college, may have a paralegal certificate, was the state weight lifting champion in 1994, and has a full-scale IQ of 123, which the Board characterized as “superior.” The Board stated that Mr. Delbert is able to perform sedentary physical demand level work, and that Ms. Saniga

identified sedentary job openings in his geographic location for which he would be qualified or could become qualified. The Board agreed with the vocational conclusions of Ms. Saniga, and found that Mr. Delbert has vocational rehabilitation potential, is able to return to work, and is not permanently and totally disabled. Thus, the PTD Review Board concluded that Mr. Delbert's application for PTD benefits should be denied. (See Exhibit O, 3/11/19 PTD Board Initial Recommendations, filed by the Employer below.)

Mr. Delbert submitted to the PTD Review Board the June 10, 2019 Rehabilitation Evaluation completed by Michelle Moore, QRP, on June 10, 2019. Ms. Moore stated that Mr. Delbert has no transferrable skills, and that she found no occupations appropriate for Mr. Delbert. Ms. Moore criticized Ms. Saniga's report for failing to consider Mr. Delbert's cognitive limitations or temperaments when completing the transferrable skills analysis. She opined that Mr. Delbert was unable to perform any of the sedentary jobs identified by Ms. Saniga based upon his past work history, temperament, the need for data entry skills, lack of verbal skills, lack of numerical skills, lack of clerical perception skills, lack of language development, inability to deal with people, requirement of professionalism, lack of listening skills, and lack of computer proficiency. Ms. Moore opined that Mr. Delbert does not have the ability to acquire the skills needed for any of the jobs identified by Ms. Saniga, and she concluded that he is unable to perform remunerative employment within 75 miles of his residence or former employment. (See Exhibit P, Ms. Moore's Rehabilitation Evaluation Report, filed by the Claimant below.)

The PTD Review Board issued its Final Recommendations on September 9, 2019. The Board stated that based on Mr. Delbert's IQ, as well as his completion of one year of college, paralegal certificate and foreman certificate, they believe that he can perform at a high level, contrary to Ms. Moore's opinions. The Board noted that the executive dysfunction documented

in Mr. Delbert's psychological testing would not prevent him from acquiring skills to perform sedentary semi-skilled work, or from participating in job placement services for a sedentary position. Accordingly, the Board concluded that Mr. Delbert has vocational rehabilitation potential, is able to return to work, and is not permanently and totally disabled. Therefore, they reaffirmed their conclusion that his application for a PTD award should be denied. (See Exhibit Q, PTD Review Board's 9/9/19 Final Recommendations, filed by the Employer below.)

On September 19, 2019, the Claims Administrator issued the order in litigation, denying Mr. Delbert's application for PTD benefits, based upon the conclusions of the PTD Review Board. (See Exhibit C, Claims Administrator's 9/19/19 order, filed by the Employer below.)

In support of his protest to the Claims Administrator's September 19, 2019 order, the Claimant submitted the December 27, 2019 vocational report of Catherine L. Phillis-Harvey. Ms. Phillis-Harvey did not meet with Mr. Delbert; rather, she based her opinions solely upon a review of records provided to her by his attorney. Ms. Phillis-Harvey indicated that she did not believe Mr. Delbert was able to fully perform sedentary work. She concluded "Mr. Delbert is not suited to sedentary work as he does not have transferable skills to this type of work, does not have the executive skills for this work and has cervical issues as noted by the MR in 2015 and the latest FCE . . . it is this case manager's vocational expert opinion that Mr. Delbert is permanently and totally disabled as a result of the compensable injuries/conditions." (See Exhibit R, Ms. Phillis-Harvey's 12/27/19 report, filed by the Claimant below.)

On February 4, 2021, the Administrative Law Judge reversed the Claims Administrator's September 19, 2019 order, and granted a permanent total disability award to Mr. Delbert. In so ruling, she concluded: "The report of Ms. Phyllis-Harvey is compelling and when considered with the entire record, leads to the decision that the claimant is permanently and totally disabled. It is

found that the claimant is not able to engage in substantial gainful activity that requires skills or abilities which he could acquire, or which are comparable to those of any gainful activity in which he was previously engaged with some regularity and over a substantial period of time.” (Exhibit B)

The Board of Review affirmed the ALJ’s Order on October 22, 2021, adopting the ALJ’s Findings of Fact and Conclusions of Law. (Exhibit A)

III. ASSIGNMENT OF ERROR

The Board of Review erred in finding Ms. Phillis-Harvey’s report to be the most reliable evidence of Mr. Delbert’s vocational potential, and in granting him a PTD award based upon Ms. Phillis-Harvey’s recommendations.

IV. SUMMARY OF ARGUMENT

The Board of Review’s Order is in clear violation of statutory provision, is clearly the result of erroneous conclusions of law, and is so clearly wrong based upon the evidentiary record that even when all inferences are resolved in favor of the Board’s findings, reasons and conclusions, there is insufficient support to sustain the decision, because a preponderance of the evidence demonstrates that the Claimant is capable of engaging in substantial gainful employment.

V. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Petitioner does not request oral argument and does not believe that oral argument would assist this Court in the adjudication of this matter. The issues on appeal may be fully addressed by reviewing the facts and legal arguments presented in the briefs and the record on appeal, including the Appendix. There are no principles of law to be established or modified that would require oral presentation to the Court.

VI. ARGUMENT

A. Standard of Review

1. If the decision of the Board represents a reversal of a prior ruling of either the Commission or the Office of Judges that was entered on the same issue in the same claim, the decision of the Board may be reversed or modified by the Supreme Court of Appeals only if the decision is in clear violation of constitutional or statutory provision, is clearly the result of erroneous conclusion of law, is so clearly wrong based upon the evidentiary record that even when all inferences are resolved in favor of the Board's findings, reasons and conclusions, there is insufficient support to sustain the decision. W. Va. Code § 23-5-15(e).

2. The Worker's Compensation Board of Review shall reverse, vacate, or modify the order or decision of the Administrative Law Judge only if the substantial rights of the petitioner or petitioners have been prejudiced because the Administrative Law Judge's findings are:

- (1) In violation of statutory provisions; or
- (2) In excess of the statutory authority or jurisdiction of the Administrative Law Judge;
or
- (3) Made upon unlawful procedure; or
- (4) Affected by other error of law; or
- (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.

W. Va. Code §23-5-12(b).

3. The resolution of any issue 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.

W. Va. Code §23-4-1(g).

4. A claimant bears the burden of establishing his or her claim. *Bilchak v. State Worker's Compensation Commissioner*, 153 W. Va. 288, 168 S.E.2d 723 (1969).

5. A disability which renders the injured employee unable to engage in substantial gainful activity requiring skills or abilities which can be acquired or which are comparable to those of any gainful activity in which he or she has previously engaged with some regularity and over a substantial period of time shall be considered in determining the issue of total disability. The comparability of preinjury income to post-disability income will not be a factor in determining permanent total disability. Geographic availability of gainful employment within a driving distance of seventy-five miles from the residence of the employee or within the distance from the residence of the employee to his or her preinjury employment, whichever is greater, will be a factor in determining permanent total disability. W. Va. Code §23-4-6(n)(2)

B. Points of Argument

The conclusion of the Board and the ALJ that Mr. Delbert is not able to engage in substantial, gainful employment was clearly wrong. The Board and ALJ erred in finding Ms. Phillis-Harvey's report to be "compelling evidence" of Mr. Delbert's occupational potential, because Ms. Phillis-Harvey did not interview Mr. Delbert, nor did she conduct either a transferrable skills analysis or a labor market survey. Furthermore, her conclusion that Mr. Delbert is unable to fully perform sedentary work is contradicted by the results of his 2018 FCE, which identified no limitations on his ability to perform work at the sedentary physical demand level for eight hours per day.

Both Ms. Phyllis-Harvey and Ms. Moore appeared to focus solely on Mr. Delbert's ability to engage in substantial gainful activity using skills or abilities in which he has previously engaged. They failed to consider his ability to engage in substantial gainful activity requiring skills or abilities *which can be acquired*, as required by W. Va. Code §23-4-6(n)(2).

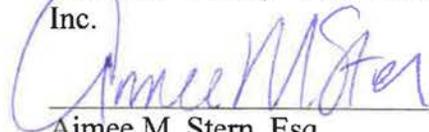
Ms. Moore's conclusion that Mr. Delbert lacks the verbal skills and general learning ability to perform any of the jobs identified by Ms. Saniga is contradicted by the results of his psychological testing, which has consistently shown him to have an IQ in the superior range; as well as by Dr. Law's observations that Mr. Delbert's vocabulary usage was above average and he utilized a significant degree of intellectualization; and by Dr. Cooper-Lehki's findings of linear and well-organized thought processes, objectively intact concentration, intact immediate and short-term recall, intact memory, 29/30 score on the mini-mental status exam, appropriate fund of knowledge for educational background, intact ability for abstract thought, good judgment, and above-average intelligence based on language skills. Furthermore, Ms. Moore's criticism of Ms. Saniga's vocational evaluation, that "Allegiant Managed Care also did not consider any cognitive limitations or temperaments when completing the transferrable skills" is without merit; as Mr. Delbert's repeated claim that he suffers from cognitive impairment has not only never been proven, it has been specifically refuted by Dr. Cooper-Lehki. Ms. Moore failed to explain her opinion that Mr. Delbert does not have the ability to acquire the skills necessary for any of the jobs identified by Ms. Saniga; which conclusion is contradicted by his documented superior IQ and by Ms. Saniga's observation that Mr. Delbert would be an excellent candidate for positions requiring on-the-job training, because "he has, over the course of his career, demonstrated the ability to learn new skills via training received on the job."

As the PTD Review Board correctly concluded, Ms. Saniga's two reports are the most credible evidence of Mr. Delbert's vocational potential. Ms. Saniga met with Mr. Delbert on two occasions, and took a detailed history of his compensable injuries, current symptoms, non-compensable medical conditions, education, vocational history, and general skills and abilities. Her transferrable skills analysis and identification of residual employment options through the OASYS program yielded numerous results, and her labor market survey identified multiple positions in Mr. Delbert's geographic region for which he would be considered qualified with either on the job training or a brief formal training program focused on enhancing his existing computer skills. The Board and ALJ were clearly wrong in not finding Ms. Saniga's reports to be the most credible evidence of Mr. Delbert's vocational potential, and in granting him a permanent total disability award.

VII. CONCLUSION

For the reasons set forth above, the Respondent respectfully requests that this Honorable Court reverse the Board of Review's October 22, 2021 Order and reinstate the Claims Administrator's September 19, 2019 order.

Respectfully submitted,
Marshall County Coal Resources,
Inc.



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Charleston

CHARLES DELBERT,

Claimant/Respondent,

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MARSHALL COUNTY COAL RESOURCES, INC.

Employer/Petitioner

SUPREME COURT NO: Unassigned

JCN: 2014014137

BOR APPEAL NO: 2056410

FROM THE WORKERS' COMPENSATION BOARD OF REVIEW
EMPLOYER'S PETITION FOR APPEAL

CERTIFICATE OF SERVICE

I hereby certify that I have, this 18th day of November, 2021, served a copy of the within and foregoing **Brief on Behalf of Employer/Appellant, Murray American Energy, Inc.**, upon all parties to this matter via U.S. Mail to the following:

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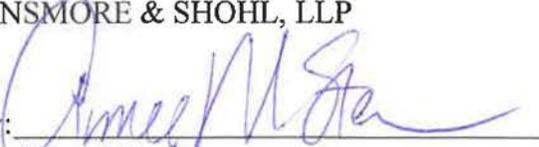
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Respectfully Submitted,

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By:


Aimee M. Stern

Counsel for Employer/Appellant

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APPENDIX B – REVISED RULES OF APPELLATE PROCEDURE

WORKERS' COMPENSATION APPEALS DOCKETING STATEMENT

Complete Case Title: Charles Delbert, Claimant/Respondent, Marshall County Coal Resources, Inc., Employer/Petitioner
 Petitioner: Marshall County Coal Resources, Inc. Respondent: Charles Delbert
 Counsel: Aimee M. Stern Counsel: M. Jane Glauser
 Claim No.: 2014014137 PTD Board of Review No.: 2056410
 Date of Injury/Last Exposure: 05/19/09 Date Claim Filed: 08/13/14
 Date and Ruling of the Office of Judges: 02-04-2021
 Date and Ruling of the Board of Review: 10-22-2021
 Issue and Relief requested on Appeal: Reversal of BOR Decision 10-22-2021 and reinstatement of Claim Administrator Order 09-09-2019

DO NOT REMOVE FROM FILE

CLAIMANT INFORMATION	
Claimant's Name:	<u>Charles Delbert</u>
Nature of Injury:	<u>Various - See attached</u>
Age: <u>67</u>	Is the Claimant still working? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No. If yes, where: _____
Occupation: _____	No. of Years: _____
Was the claim found to be compensable? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes, order date: _____	

ADDITIONAL INFORMATION FOR PTD REQUESTS	
Education (highest): _____	Old Fund or <u>New Fund</u> (please circle one)
Date of Last Employment: <u>05/19/09</u>	
Total amount of prior PPD awards: <u>49%</u>	(add dates of orders on separate page)
Finding of the PTD Review Board: <u>Denied</u>	

List all compensable conditions under this claim number: See attached
(Attach a separate sheet if necessary)

Are there any related petitions currently pending or previously considered by the Supreme Court?
 Yes No
(If yes, cite the case name, docket number and the manner in which it is related on a separate sheet.)

Are there any related petitions currently pending below? Yes No
(If yes, cite the case name, tribunal and the manner in which it is related on a separate sheet.)

<p>If an appealing party is a corporation an extra sheet must list the names of parent corporations and the name of any public company that owns ten percent or more of the corporation's stock. If this section is not applicable, please so indicate below.</p> <p><input type="checkbox"/> The corporation who is a party to this appeal does not have a parent corporation and no publicly held company owns ten percent or more of the corporation's stock.</p>
--

<p>Do you know of any reason why one or more of the Supreme Court Justices should be disqualified from this case? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If so, set forth the basis on an extra sheet. Providing the information required in this section does not relieve a party from the obligation to file a motion for disqualification in accordance with Rule 33.</p>

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Charleston

CHARLES DELBERT,

Claimant/Respondent,

v.

MURRAY AMERICAN ENERGY, INC.

Employer/Petitioner

SUPREME COURT NO: Unassigned

JCN: 2014014137

BOARD OF REVIEW APPEAL NO: 2055410

FROM THE WORKERS' COMPENSATION BOARD OF REVIEW

**ADDENDUM TO WV SUPREME COURT OF APPEALS DOCKETING STATEMENT –
RELATED PETITIONS PENDING BEFORE WV SUPREME COURT**

- 1. WV Supreme Court No. 20-0537, Board of Review Appeal No. 2055031 – Claim Order 08-12-2019 denying reopening for additional PPD – affirmed by 12-17-2019 ALJ Decision**

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Charleston

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Employer/Petitioner

SUPREME COURT NO: Unassigned

JCN: 2014014137

BOARD OF REVIEW APPEAL NO: 2055410

FROM THE WORKERS' COMPENSATION BOARD OF REVIEW

**ADDENDUM TO WV SUPREME COURT OF APPEALS DOCKETING STATEMENT –
ADDITIONAL INFORMATION FOR PTD REQUESTS**

CLAIM NO.	DATE OF INJURY	PPD AWARDED	DATE OF AWARD
900025344	11-22-89 – Low back	0%	N/A – No lost time
910052032	02-23-91 – Left arm	0%	N/A – No lost time
950037058	02-08-95 – Right arm	3%	08-18-98
970022789	10-03-96 – Lumbar spine	11%	02-21-97
970037946	01-06-97 – Right fourth finger	1%	01-26-00
990051738	02-13-99 – Cervical spine	25%	07-12-05 – 13% 01-07-08 – 12%
200156879	04-24-01 – Thoracic spine, depression	5% thoracic 4% depression	04-16-09 – 5% 7-28-11 – 4%
2014014137	05-19-09 – occupational pneumoconiosis	10%	07-21-14