

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

**JAMES CLARK,
Claimant Below, Petitioner**

v.) No. 25-ICA-75

(JCN: 2020021906)

**SPARTAN MINING COMPANY c/o ANR,
Employer Below, Respondent**

**FILED
September 30, 2025**

ASHLEY N. DEEM, CHIEF DEPUTY CLERK
INTERMEDIATE COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner James Clark appeals the January 9, 2025, order of the Workers Compensation Board of Review (“Board”). Respondent Spartan Mining Company c/o ANR (“Spartan”) timely filed a response.¹ Mr. Clark did not reply. The issue on appeal is whether the Board erred in affirming the claim administrator’s order, which denied Mr. Clark’s application for permanent total disability (“PTD”) benefits.

This Court has jurisdiction over this appeal pursuant to West Virginia Code § 51-11-4 (2024). 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.

On December 12, 2021, Mr. Clark completed a reopening application for PTD benefits and submitted a summary of permanent partial disability awards. According to the Board’s order, Mr. Clark received multiple PPD awards in separate claims, including: 9% for the left shoulder in claim 980002917; 12% for bilateral carpal tunnel syndrome in claim 2002053037; 17% for the cervical spine, 5% for the thoracic spine, and 1% for the left shoulder in claim number 2008001167; 15% for the thoracic spine, and 1% for the left shoulder in claim 2008001167; 15% for occupational pneumoconiosis in claim number 2010133211; a 1% for the left knee and an 8% for the lumbar spine for a compensable injury dated September 3, 2020; and a 1% for the right knee in claim number 2020021906. On a handwritten document submitted in the appendix record by Mr. Clark, he also listed 0% for claims 2018023826 and 2018019171 for the lungs; 0% for claim 900048318 for the right-hand finger; and 0% for claim 860029366 for the back.

¹ Mr. Clark is represented by M. Rachel Wolfe, Esq. Spartan is represented by Sean Harter, Esq.

In a January 9, 2023, letter, Scott Clark, from the Offices of the Insurance Commissioner, indicated that Mr. Clark's awards resulting from multiple workers' compensation claims appeared to total at least 62%.²

Pursuant to Mr. Clark's reopening application for PTD benefits, Spartan referred Mr. Clark to Prasadarao Mukkamala, M.D., to reevaluate the compensable injuries pursuant to West Virginia Code § 23-4-6(n)(1). On March 30, 2023, Dr. Mukkamala evaluated Mr. Clark. Mr. Clark reported neck pain with radiation to the left upper extremity. Mr. Clark also reported stiffness of the neck, headaches, pain and limitation of motion at the left shoulder, pain in the low back with radiation to the left lower extremity, and pain at the right knee. Dr. Mukkamala diagnosed injuries to the neck and left shoulder, the low back, left knee, right knee, left ring finger, carpal tunnel syndrome, and occupational pneumoconiosis. Dr. Mukkamala placed Mr. Clark at maximum medical improvement ("MMI") for all of the compensable injuries.

Using the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993), Dr. Mukkamala assessed Mr. Clark's permanent impairment. For the neck and cervical spine, Dr. Mukkamala concluded that Mr. Clark had 16% whole person impairment ("WPI"). Dr. Mukkamala also assessed 15% for occupational pneumoconiosis, 12% WPI for the cervical spine, 4% for the left shoulder, 0% WPI for the ring finger, 0% for the carpal tunnel syndrome, 0% for the thoracic spine, 3% WPI for the lumbar spine, 1% for the right knee, and 1% for the left knee, which he combined to 33% WPI. Although Dr. Mukkamala noted that Mr. Clark underwent a total left knee replacement arthroplasty, he noted that the surgery was not compensable and thus provided no impairment rating for it. Dr. Mukkamala concluded that Mr. Clark did not meet the threshold of 50% whole person impairment for consideration of PTD benefits.

On April 24, 2023, the claim administrator issued an order denying Mr. Clark's application for PTD benefits based on Dr. Mukkamala's opinion that Mr. Clark did not meet the requisite 50% whole body medical impairment to be considered for a PTD award. Instead, the claim administrator explained that Dr. Mukkamala found only 33% WPI. Mr. Clark protested this order to the Board.

On June 21, 2023, Bruce Guberman, M.D., evaluated Mr. Clark. Dr. Guberman's impression was history of a fracture of the distal phalanx of the left fourth finger due to injury occurring at work on December 29, 1986; chronic posttraumatic strain of the left shoulder due to injury occurring at work on June 19, 1997; status post arthroscopic

² We note that the record is somewhat ambiguous regarding the impairment awards Mr. Clark received during his work history. However, by order dated January 19, 2023, Spartan reopened the claim for permanent total disability benefits, which is an acknowledgement that Mr. Clark exceeded the 50% permanent partial disability threshold required by W. Va. Code § 23-4-6(n)(1).

subacromial decompression and distal clavicle resection, and debridement of Type 1 SLAP lesions on June 16, 2008; chronic posttraumatic strain of the cervical spine due to an injury occurring on June 15, 2007; chronic posttraumatic strain of the lumbosacral spine due to an injury occurring on September 3, 2010; chronic posttraumatic strain of the left knee due to an injury occurring on September 3, 2010; and chronic posttraumatic strain of the right knee from an injury on March 23, 2020, status post diagnostic arthroscopy of the right knee with partial medial meniscectomy.

Using the *Guides*, Dr. Guberman found that Mr. Clark had 11% impairment for the left shoulder, 15% for the cervical spine, 7% for the thoracic spine, 7% for the lumbar spine, 20% for the left knee injury, 4% for the right knee injury, and 15% for occupational pneumoconiosis. The 20% rating for the left knee was based on Mr. Clark's left total knee replacement. Dr. Guberman combined these percentages for a total of 54% WPI.

On July 24, 2023, Mr. Clark answered interrogatories from Spartan. Mr. Clark indicated that he underwent left knee replacement surgery on May 26, 2021, and that, although he requested that this surgery be covered under his workers' compensation claim, the treatment was time barred pursuant to West Virginia Code § 23-4-16(a)(4) (2005).³

Syam Stoll, M.D., evaluated Mr. Clark on January 23, 2024, at the request of Spartan. Dr. Stoll assessed fracture of unspecified phalanx of the left ring finger; unspecified sprain of the left shoulder; sprain of ligaments of the cervical spine; sprain of ligaments of the thoracic spine; sprain and strain of the lumbar spine; occupational pneumoconiosis; a tear of the left knee medial meniscus; and a tear of the right knee medial meniscus.

Using the *Guides*, Dr. Stoll assessed Mr. Clark's permanent impairment. Dr. Stoll assessed 15% WPI for OP with the 11% impairment for the cervical spine using the combined values chart on page 322 for a total of 24% WPI, 6% for the left shoulder, 5%

³West Virginia Code § 23-4-16(a)(4) provides:

With the exception of the items set forth in subsection (d), section three of this article, in any claim in which medical or any type of rehabilitation service has not been rendered or durable medical goods or other supplies have not been received for a period of five years, no request for additional medical or any type of rehabilitation benefits shall be granted nor shall any medical or any type of rehabilitation benefits or any type of goods or supplies be paid for by the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, if they were provided without a prior request. For the exclusive purposes of this subdivision, medical services and rehabilitation services shall not include any encounter in which significant treatment was not performed.

for the lumbar spine, 3% for the thoracic spine, 1% for the left knee, 1% for the right knee, and 1% for the left ring finger. Dr. Stoll combined these figures and recommended 38% WPI for the compensable injuries. Dr. Stoll indicated that he disagreed with Dr. Guberman's 54% WPI rating. Dr. Stoll noted that Dr. Guberman failed to apportion for preexisting degenerative joint disease and spondylosis, and that he provided an impairment rating for procedures that were not compensable, such as the left knee total arthroplasty.

In the October 17, 2024, Final Recommendation, the SmartCasualtyClaims PTD Review Board ("PTD Review Board") found that the reports of Dr. Mukkamala and Dr. Stoll were the most credible.⁴ The PTD Review Board determined there were no clinical records available regarding Mr. Clark's thoracic left and right rotation capability to explain why his range of motion improved substantially in seven months between the evaluations of Drs. Guberman and Stoll. The PTD Review Board recommended a 5% thoracic impairment, 2% greater than that found by Dr. Stoll. More importantly, the PTD Review Board considered the left total knee arthroplasty and determined that the surgery was not authorized in a workers' compensation claim. Thus, the PTD Review Board concluded that Dr. Guberman's 20% impairment recommendation incorrectly included a non-compensable event. The PTD Review Board concluded that Mr. Clark failed to meet the statutory requirement of 50% WPI to be eligible for PTD status.

On October 28, 2024, Dr. Guberman issued a supplemental report regarding Mr. Clark's claim for PTD benefits. Dr. Guberman stated that apportionment was only appropriate for the lumbar spine and not the cervical spine, thoracic spine, left knee, or right knee; that the left knee total arthroplasty was directly causally related to the compensable injury; and that his previous 54% impairment rating was accurate.

On January 9, 2025, the Board affirmed the claim administrator's order, which rejected Mr. Clark's application for PTD benefits. The Board concluded that based on a preponderance of the evidence, Mr. Clark did not meet the 50% whole body medical impairment threshold for consideration of PTD benefits. Mr. Clark now appeals the Board's order.

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

⁴ The SmartCasualty Claims PTD Review Board includes J.K. Lilly, M.D, but the remaining members of the PTD Review Board were not disclosed.

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.

Syl. Pt. 2, *Duff v. Kanawha Cnty. Comm'n*, 250 W. Va. 510, 905 S.E.2d 528 (2024).

On appeal, Mr. Clark argues that the Board was clearly wrong in affirming the claim administrator's order denying his application for PTD benefits, because he met the burden of proving the required 50% whole person medical impairment. Further, Mr. Clark asserts that the Board failed to properly evaluate the medical evidence, and that Dr. Guberman's report is the most thorough and comprehensive report of record. We disagree.

West Virginia Code § 23-4-6(n)(1) (2005) provides, in part:

in order to be eligible to apply for an award of permanent total disability benefits for all injuries incurred and all diseases, including occupational pneumoconiosis, regardless of the date of last exposure . . . a claimant (A) Must have been awarded a sum of fifty percent in prior permanent partial disability awards; (B) must have suffered a single occupational injury or disease which results in a finding by the commission that the claimant has suffered a medical impairment of fifty percent; or (C) has sustained a thirty-five percent statutory disability pursuant to the provisions of subdivision (f) of this section. Upon filing an application, the claim will be reevaluated by the examining board or other reviewing body pursuant to subdivision (i) of this section to determine if the claimant has suffered a whole body medical impairment of fifty percent or more resulting from either a single occupational injury or occupational disease or a combination of occupational injuries and occupational diseases . . . If the claimant has not suffered whole body medical impairment of at least fifty percent or has sustained a thirty-five percent statutory disability pursuant to the provisions of subdivision (f) of this section, the request shall be denied. . . .

Here, Mr. Clark met the first threshold necessary to be considered for a PTD award, i.e., he has received more than 50% in PPD awards, cumulatively, in his various

compensable workers' compensation claims.⁵ Regarding the second threshold, however, the Board determined that there is no reliable medical opinion on record establishing that Mr. Clark has sustained a whole person medical impairment of 50% or more from his compensable injuries. The Board found that the PTD Review Board considered multiple IME reports and determined that the reports of Dr. Mukkamala and Dr. Stoll were the most credible. In contrast, the Board found that Dr. Guberman's report was not credible, because he found 20% WPI for Mr. Clark's left knee based on a total knee replacement which was not authorized in the claim. Ultimately, the Board concluded that there is no reliable rating greater than 39% WPI and that Mr. Clark had failed to meet the required 50% whole person medical impairment threshold for further consideration of a PTD award.

Upon review, we conclude that the Board was not clearly wrong in finding that Mr. Clark failed to establish with medical evidence that he has 50% or more impairment related to his compensable injuries. The Board did not err in its determination that Dr. Guberman improperly included an impairment rating for a non-compensable left total knee replacement. The total knee replacement was never authorized in the claim, and it cannot be used to sustain Mr. Clark's petition for a PTD award. Further, as the Supreme Court of Appeals has set forth, "[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). With this deferential standard of review in mind, we cannot conclude that the Board was clearly wrong in affirming the claim administrator's order denying Mr. Clark's application for PTD benefits.

Accordingly, we affirm the Board's January 9, 2025, order.

Affirmed.

⁵ As the Supreme Court of Appeals of West Virginia observed in *Murray Am. Energy, Inc. v. Szalay*, No. 21-0570, 2023 WL 3971011, at *1 (W. Va. June 13, 2023) (memorandum decision):

[p]ursuant to W. Va. Code § 23-4-6(n)(1), a claimant must first meet the eligibility threshold by demonstrating that he or she has been awarded the sum of 50%, or 35% in statutory disability. Most often the eligibility threshold is determined by simply adding the claimant's prior permanent partial disability awards. Once the eligibility threshold has been satisfied, the claimant will be reevaluated for a determination as to whether he or she meets the whole-person medical impairment threshold by being assessed with at least 50% whole-person impairment from all compensable injuries/diseases, or a 35% statutory award.

ISSUED: September 30, 2025

CONCURRED IN BY:

Chief Judge Charles O. Lorensen
Judge Daniel W. Greear
Judge S. Ryan White