

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

JAMES E. MAYNARD, Petitioner

May 29, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 100641 (BOR Appeal No. 2043765)
(Claim No. 2007224562)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
ROCKSPRING DEVELOPMENT, INC.,
Respondent**

MEMORANDUM DECISION

Petitioner James E. Maynard, by John Blair, his attorney, appeals the West Virginia Workers' Compensation Board of Review's Order. Rockspring Development, Inc., by Marion Ray, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated April 26, 2010, in which the Board affirmed a November 2, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the claims administrator's December 5, 2007, Order which granted a 0% permanent partial disability award. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this matter is appropriate for consideration under the Revised Rules. Having considered the petition and the relevant decision of the lower tribunal, the Court is of the opinion that the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the Court determines that there is no prejudicial error. This case does not present a new or significant question of law. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

In this case, Mr. Maynard was working for Rockspring Development, Inc. as a trackman, when he injured his ribs. The claims administrator held the claim compensable on May 11, 2007, for a closed fracture of the ribs and traumatic pneumothorax. Based on an evaluation by Dr.

Bachwitt, the claims administrator granted a 0% permanent partial disability award on December 5, 2007.

The Office of Judges held that Mr. Maynard was entitled to a 1% permanent partial disability award based on the report of Dr. Landis. Mr. Maynard disagrees and asserts that he is entitled to an additional 2% permanent partial disability award as recommended by Dr. Carlson's report.

In its Order reversing the claims administrator's decision, the Office of Judges noted that each physician noted residual tenderness at the injury's location. It also noted that Dr. Carlson's recommendation of a 3% permanent partial disability award was based on a finding of lack of effective treatment, which the Office of Judges found was not supported by the record. Rather, the Office of Judges found that the injury had spontaneously resolved and only mild tenderness remained, and concluded that Dr. Landis's recommendation of a 1% permanent partial disability award was supported by a preponderance of evidence. The Board of Review reached the same reasoned conclusion in its decision of April 26, 2010.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of any constitutional or statutory provision, nor is it clearly the result of erroneous conclusions of law, nor is it based upon a material misstatement or mischaracterization of the evidentiary record. Therefore, the Board of Review Order is affirmed.

Affirmed.

ISSUED: May 29, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh