

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

**U. S. STEEL MINING COMPANY, LLC,
Petitioner**

**June 14, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA**

**vs.) No. 100678 (BOR Appeal No. 2043914)
(Claim No. 2002027141)**

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
CASSIDY D. LESTER, Respondent**

MEMORANDUM DECISION

Petitioner U. S. Steel Mining Company, by Howard Salisbury Jr., its attorney, appeals the decision of the Board of Review. Cassidy D. Lester, by John Blair, his 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 December 9, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges modified the claims administrator's October 29, 2008, decision that Mr. Lester was fully compensated for the injury to his left hand by a 2% permanent partial disability award and was entitled to a 5% permanent partial disability award for injuries to his lumbar spine. The Office of Judges granted Mr. Lester an 8% permanent partial disability award for impairment of the lumbar spine and affirmed the remainder of the claims administrator's Order. 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.

Mr. Lester was employed as a shuttle car operator with U. S. Steel Mining Company. On October 25, 2001, he injured his left hand and lumbar spine when he tripped and fell inside a coal mine. Mr. Lester has undergone four independent medical evaluations, all of which resulted in a permanent partial disability award recommendation for the lumbar spine only. On January 13, 2003, Dr. Ramas recommended a 0% permanent partial disability award; on January 29, 2008, Dr. Guberman recommended an 8% permanent partial disability award; on March 10, 2008, Dr. Landis recommended a 5% permanent partial disability award; and on March 25, 2009, Dr. Mukkamala recommended a 5% permanent partial disability award.

In its Order, the Office of Judges held that Mr. Lester is entitled to an 8% permanent partial disability award for injuries to his lumbar spine. Mr. Lester's employer, U. S. Steel Mining Company, disputes this finding and asserts that he is entitled to no more than a 5% permanent partial disability award.

The only issue on appeal to this Court is the amount of permanent impairment for the lumbar spine injury. The Office of Judges noted that Mr. Lester underwent independent medical examinations performed by Drs. Ramas, Landis, Mukkamala, and Guberman. The Office of Judges gave less weight to the reports of Drs. Ramas and Landis, because the report of Dr. Ramas was outdated and Dr. Landis reported invalid range of motion findings with regard to Mr. Lester's lumbar spine. The Office of Judges found that the preponderance of the evidence supported the conclusions reached by Dr. Guberman, and his recommendation of an 8% permanent partial disability award for the lumbar spine injury. 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 decision of the Board of Review is affirmed.

Affirmed.

ISSUED: June 14, 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