

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

D'MITRI L. BEVERLY, Petitioner

February 17, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 101397 (BOR Appeal No. 2044239)
(Claim No. 2006057562)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
WEST VIRGINIA DIVISION OF HIGHWAYS,
Respondent**

MEMORANDUM DECISION

Petitioner D'Mitri L. Beverly, by Patrick Maroney, his attorney, appeals the decision of the Board of Review. The West Virginia Division of Highways, by Steven Wellman, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated October 5, 2010, in which the Board affirmed a February 19, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges modified the claims administrator's February 6, 2009, decision granting Mr. Beverly a 5% permanent partial disability award for injuries to his right shoulder, and instead granted Mr. Beverly a 7% permanent partial disability award for injuries to his right shoulder. 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 its Order, the Office of Judges held that Mr. Beverly was not entitled to an additional award for his lumbar spine injuries, and that Mr. Beverly was entitled to a 7% permanent partial disability award for his right shoulder injuries. Mr. Beverly disputes this finding and asserts that he is entitled to an increased permanent partial disability award.

Specifically, the Office of Judges found that the June 4, 2009, report of Dr. Guberman establishes that Mr. Beverly has a 7% whole person impairment for injuries to his right shoulder. The Office of Judges also found that Mr. Beverly had already received permanent partial disability awards for injuries to his lumbar spine in excess of the 10% impairment of the lumbar spine recommended by Dr. Guberman, and was therefore overcompensated for these injuries. The Board of Review reached the same reasoned conclusions in its decision of October 5, 2010.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of constitutional or statutory provision, clearly the result of erroneous conclusions of law, or is based upon the Board's material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the decision of the Board of Review is affirmed.

Affirmed.

ISSUED: February 17, 2012

CONCURRED IN BY:

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh

DISSENTING:

Chief Justice Menis E. Ketchum