

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

PASCAL “JOSEPH” P. BISSON, Petitioner

May 3, 2012

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

**vs.) No. 101445 (BOR Appeal No. 2044581)
(Claim No. 2006016267)**

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER, and
BEAVER CREEK CLEARING, Respondent**

MEMORANDUM DECISION

Petitioner, Pascal “Joseph” P. Bisson, by John C. Blair, appeals the Board of Review order granting a 20% permanent partial disability award, asserting he is entitled to an additional 2% permanent partial disability award. Beaver Creek Clearing, by Timothy E. Huffman, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers’ Compensation Board of Review Final Order dated October 13, 2010, in which the Board affirmed a May 7, 2010, order of the Workers’ Compensation Office of Judges. In its order, the Office of Judges affirmed the claims administrator’s award of 20% permanent partial disability. 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, response, 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. Bisson suffered a right femur fracture when he slipped and fell down a steep hill. Following this injury, Mr. Bisson underwent several surgeries to the right femur due to non-union of the bones. Prior to this work-related injury, Mr. Bisson suffered a prior right femur fracture. This injury was held compensable by the Claims Administrator and independent medical evaluations conducted.

Dr. Luis Loimil evaluated Mr. Bisson and opined Mr. Bisson was entitled to a 20% impairment due to the use of a cane or crutch for ambulation. Dr. Bruce A. Guberman also evaluated

Mr. Bisson and opined 22% impairment. A final evaluation was performed by Dr. Michael R. Condaras who opined 19% impairment. Dr. Condaras disagreed with Dr. Guberman's findings due to Dr. Guberman's right knee evaluation finding flexion contracture, while Dr. Condaras found some right knee limitation with regard to flexion with normal extension.

The Office of Judges considered each of the independent medical evaluations and determined Dr. Loimil's report, finding 20% impairment based on gait derangement, the most persuasive. Both Dr. Guberman and Dr. Condaras based their impairment ratings on atrophy, as well as other methods of evaluation. The use of these methods, the Office of Judges determined, was inappropriate and accordingly afforded these reports less evidentiary weight. As a result, the Office of Judges held the 20% impairment award was appropriate. The Office of Judges, too, found no basis for awarding Mr. Bisson an additional 2% permanent partial disability, or for disputing the Claims Administrator's findings. The Board of Review reached the same reasoned conclusions in affirming the Office of Judges in its decision of October 13, 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 Court hereby affirms the Board of Review order denying Mr. Bisson's request for an additional 2% permanent partial disability.

Affirmed.

ISSUED: May 3, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Margaret L. Workman

Justice Thomas E. McHugh

Justice Brent D. Benjamin not participating.