

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

ROGER COLLIER, Petitioner

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

vs.) No. 101447(BOR Appeal No. 2044455)
(Claim No. 950003965)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
VERIZON WEST VIRGINIA, INC., Respondent

MEMORANDUM DECISION

Petitioner, Roger Collier, by John C. Blair, his attorney, appeals the Board of Review order denying Mr. Collier's request for an additional award of 7% permanent partial disability. Verizon West Virginia, Inc. (hereinafter "Verizon"), by Marion E. Ray, 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 an April 6, 2010, Order of the Workers' Compensation Office of Judges Order. In its Order, the Office of Judges affirmed the claims administrator's Order denying Mr. Collier's request for an additional award of 7% permanent partial disability. The appeal was timely filed by the petitioner and a response was filed by Verizon West Virginia, Inc. 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.

The Board of Review held the preponderance of the evidence supports a finding that Mr. Collier did not suffer a permanent left elbow injury and was properly granted 0% permanent partial disability. Mr. Collier asserts the preponderance of the evidence supports a finding that he suffers from 7% impairment to the left elbow as set forth in Dr. Victor Poletajev's independent medical evaluation report. Verizon West Virginia asserts the preponderance of the evidence supports the award of 0% impairment in this claim.

In its Order, the Office of Judges considered the reports of Dr. Poletajev along with the additional reports of Dr. Prasadarao Mukkamala and Dr. Paul Bachwitt who found 0% impairment. The Office of Judges found Dr. Poletajev's report should be accorded no weight due to his inclusion of factors not in accord with the American Medical Association's, *Guides to the Evaluation of Permanent Impairment*, Fourth Edition. It further held the best determination of Mr. Collier's impairment could be found in Dr. Mukkamala and Dr. Bachwitt's reports. The Order further sets forth that Dr. Poletajev obscured his findings in excessive complexity in a pseudo demonstration of adherence to the applicable *Guides* and W. Va. Code R. 85-20, *et seq.* The Office of Judges, too, found no basis for granting Mr. Collier's request for an award of 7% permanent partial disability or for disputing the Claims Administrator's findings. The Board of Review reached the same reasonable conclusion 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 denial of Mr. Collier's request for an additional award of 7% permanent partial disability is affirmed.

Affirmed.

ISSUED: **March 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