

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

WILLIAM R. TINNEY, Petitioner

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

vs.) No. 101448 (BOR Appeal No. 2044424)
(Claim No. 2004046919)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
KINGSTON MINING, INC., Respondent**

MEMORANDUM DECISION

Petitioner, William R. Tinney, by Gregory W. Sproles, his attorney, appeals the Board of Review order denying an additional 5% permanent partial disability award. Kingston Mining, Inc. (hereinafter "Kingston"), by T. Jonathan Cook, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated October 12, 2010, in which the Board affirmed an April 9, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's denial of Mr. Tinney's request for an additional award of 5% permanent partial disability. Mr. Tinney was previously awarded a 10% permanent partial disability award for this lumbar spine injury in another claim. 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. his 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 affirmed the claim administrator's corrected Order granting 0% permanent partial disability for Mr. Tinney's lumbar spine injury finding Mr. Tinney was previously fully compensated in a prior claim. Mr. Tinney asserts Dr. Joseph A. Snead opined Mr. Tinney suffers from 13% permanent partial disability and an additional 5% permanent partial disability should be granted. Kingston asserts Mr. Tinney is not entitled to an additional award of permanent partial disability when Dr. Prasadarao B. Mukkamala and Dr. Brian Condaras both found 8% impairment.

The Office of Judges held a memorandum Order, dated August 12, 2009, from the West Virginia Supreme Court of Appeals, refusing the appeal, preserved the administrative finality of a prior Order finding Mr. Tinney was previously fully compensated for cumulative lumbar spine permanent partial disability in Claim Number 810013211. It further held Dr. Snead's report, dated May 14, 2009, should be submitted in conjunction with a more appropriate Petition to Reopen the claim for additional consideration of permanent partial disability. Additionally, it held the claim administrator properly issued a "corrective" Order on February 25, 2009, rescinding a prior Order granting 8% permanent partial disability. The Office of Judges, too, found no basis for a further award of 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 12, 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 the petitioner's request for an additional award of 5% permanent partial disability is affirmed.

Affirmed.

ISSUED: March 29, 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