

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

WILLIAM S. RICHMOND, Petitioner

April 13, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 101585 (BOR Appeal No. 2044390)
(Claim No. 2006020060)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
BECKLEY HEALTH PARTNERS, LTD., Respondent**

MEMORANDUM DECISION

Petitioner William S. Richmond, by Gregory Prudich, his attorney, appeals the West Virginia Workers' Compensation Board of Review's Order granting a 4% permanent partial disability award for carpal tunnel syndrome. Beckley Health Partners, Ltd., by Nathaniel Kuratomi, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated November 15, 2010, in which the Board reversed a March 18, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the claims administrator's August 6, 2008, Order which granted the petitioner a 4% permanent partial disability award. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

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.

The petitioner was diagnosed with bilateral carpal tunnel syndrome. Dr. Landis evaluated the petitioner and under West Virginia Code of State Rules § 85-20-64.5 (2004) found the petitioner suffered from a 4% impairment due to his condition. The claims administrator granted the petitioner a 4% permanent partial disability award for bilateral carpal tunnel syndrome.

The Office of Judges reversed the claims administrator's order and found there was sufficient medical evidence to grant a 12% permanent partial disability award. The Office of Judges found,

according to Dr. Carlson's report, that under Table 16 of the American Medical Association's, *Guides to Evaluation of Permanent Impairment* (4th ed. 1993) the petitioner was entitled to a 6% award for mild carpal tunnel syndrome for each hand.

The Board of Review reversed the Office of Judges' Order and reinstated the claims administrator's original permanent partial disability award of 4%. The Board of Review noted that Dr. Bachwitt's report was relevant, credible, material, and reliable, especially in view of the nature of the petitioner's condition of mild carpal tunnel syndrome and treatment history. In *Davies v. West Virginia Office of Ins. Com'r*, 227 W.Va. 330, 708 S.E.2d 524 (2011), this Court held that West Virginia Code of State Rules § 85-20-64.5 (2004) was invalid as applied to Table 16 of the AMA *Guides*. Dr. Bachwitt's report, utilizing Tables 11, 12, and 15 of the AMA *Guides* and West Virginia Code of State Rules § 85-20-64.5 reflects an impairment consistent with mild carpal tunnel syndrome as found by each of the evaluating physicians.

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 Board of Review Order is affirmed.

Affirmed.

ISSUED: April 13, 2012

CONCURRED IN BY:

Justice Robin J. Davis
Justice Brent D. Benjamin
Justice Thomas E. McHugh

DISSENTING:

Chief Justice Menis E. Ketchum
Justice Margaret L. Workman