

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

September 18, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

RONALD CHAFIN, Petitioner

vs.) **No. 11-0070** (BOR Appeal No. 2044679)
(Claim No. 990066214)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
SPARTA CORPORATION, Respondent**

MEMORANDUM DECISION

Petitioner, Ronald Chafin, by John C. Blair, his attorney, appeals the Board of Review Order granting him a 3% permanent partial disability award for left carpal tunnel syndrome. The West Virginia Office of Insurance Commissioner, by Anna L. Faulkner, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated December 20, 2010, in which the Board reversed a June 1, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the claims administrator's award of 3% permanent partial disability and granted 6% permanent partial disability for left carpal tunnel syndrome. 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, 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 briefs, and the record presented, the Court finds that a memorandum decision is appropriate under Rule 21 of the Revised Rules.

Mr. Chafin was employed as a roofbolter for Sparta Corporation. During his employment, Mr Chafin was exposed to repetitive vibratory and other repetitive wrist movements. Following his retirement, Mr. Chafin sought an award of permanent partial disability for bilateral carpal tunnel syndrome. An award of 6% permanent partial disability for the right wrist was awarded on March 18, 2005. On May 5, 2009, the claims administrator awarded Mr. Chafin a 3% permanent partial disability award for the left carpal tunnel syndrome.

Dr. Ramanathan Padmanaban, M.D., evaluated Mr. Chafin for the left carpal tunnel syndrome on January 20, 2009. Based on the evaluation, Dr. Padmanaban found Mr. Chafin has a 3% impairment for the left wrist carpal tunnel syndrome. A second evaluation was conducted on August 11, 2009, by Dr. Bruce A. Guberman, M.D., who opined Mr. Chafin has a 6% impairment for the left carpal tunnel syndrome.

On its review of the reports, the Office of Judges determined Dr. Padmanaban did not explain how he arrived at his 3% impairment recommendation. While Dr. Padmanaban states he evaluated Mr. Chafin in accordance with the American Medical Association's, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) and West Virginia Code of State Rules § 85-20-64.5, his report does not disclose that he ever rated Mr. Chafin pursuant to these guidelines. Dr. Guberman's report was determined to correctly follow the guidelines and there were no indications in the report that the evaluation was flawed in any way. As a result, the Office of Judges held Mr. Chafin suffered a 6% impairment for the left carpal tunnel syndrome.

The Board of Review held the Office of Judges erred in granting the 6% impairment award. Both the evaluating physician reports were considered and Dr. Padmanaban's report was found more consistent with Mr. Chafin's injury. "The Board concludes that [Mr. Chafin] is entitled to a 3% permanent partial disability award based upon [Mr. Chafin's] history of mild left carpal tunnel syndrome, the medical records[,] and in light of the preponderance of the evidence standard set forth in West Virginia Code § 23-4-1g and [West Virginia Code of State Rules § 85-20-64.5]." As a result, the Board of Review reversed and vacated the Office of Judge's Order and reinstated the claims administrator order granting 3% permanent partial disability.

West Virginia Code of State Rules § 85-20-64.5 provides that a claimant who is able to show entitlement to a permanent partial disability award for carpal tunnel syndrome shall be eligible to receive a permanent partial disability award of 0%-6% in each affected hand. However, in *Davies v. West Virginia Office of Ins. Comm'r*, 227 W.Va. 330, 708 S.E.2d 524 (2011), this Court invalidated the application of this rule when applied to carpal tunnel syndrome ratings assessed under Table 16 of the American Medical Association's, *Guides to the Evaluation of Permanent Impairment*, at 57 (4th ed. 1993). Therefore, based upon this Court's decision in *Davies*, Mr. Chafin is entitled to a 6% permanent partial disability award based upon Dr. Guberman's recommendation.

For the foregoing reasons, we find that the decision of the Board of Review is in clear violation of constitutional or statutory provisions, is so clearly the result of erroneous conclusions of law, and is so clearly wrong based upon the evidentiary record that even when all inferences are resolved in favor of the board's findings, reasoning, and conclusions, there is insufficient support to sustain the decision. Therefore, the Court hereby *reverses* the Board of Review Order granting 3% permanent partial disability and *reinstates* the Office of Judges Order granting 6% permanent partial disability.

Reversed and Remanded.

ISSUED: September 18, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Margaret L. Workman

Justice Thomas E. McHugh

DISSENTING:

Justice Brent D. Benjamin