

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

June 12, 2013
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

RICHARD H. DAVIS,
Claimant Below, Petitioner

vs.) **No. 11-1313** (BOR Appeal No. 2045490)
(Claim No. 2001014456)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER**
Commissioner Below, Respondent

and

WAL-MART STORES, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Richard H. Davis, pro se, appeals the decision of the West Virginia Workers' Compensation Board of Review. The West Virginia Office of Insurance Commissioner, by Anna L. Faulkner, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated July 20, 2011, in which the Board affirmed an October 8, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's July 7, 2009, decision granting Mr. Davis a 2% permanent partial disability award. The Court has carefully reviewed the records, written arguments, and appendices contained in the briefs, and the case is mature for consideration.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and 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 no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Rules of Appellate Procedure.

Mr. Davis was employed as a night stocker at Wal-Mart Stores, Inc. He was injured on August 15, 2000, when a box of frozen food fell on him. One box struck his arm, which caused it to hyperextend. Another struck his head. He also fell into a stack of boxes. The claims administrator initially determined that the claim was not compensable but the decision was reversed by the Office of Judges on May 3, 2001, holding the claim compensable on a no-lost-time basis. On April 8, 2009, Mr. Davis was evaluated by Dr. Casdorff, who noted that Mr. Davis suffered from various ailments, some of which were compensable. Dr. Casdorff found that Mr. Davis had 10% impairment, but he attributed 2% whole body impairment to Mr. Davis's compensable injury. Based on Dr. Casdorff's report, the claims administrator granted Mr. Davis a 2% permanent partial disability award on July 7, 2009. The claims administrator's decision was affirmed by the Office of Judges on October 8, 2010, and by the Board of Review on July 20, 2011, leading to this appeal.

The Office of Judges found that Mr. Davis had not established that he should be granted a greater than 2% permanent partial disability award. The Office of Judges found that the report of Dr. Casdorff was the only evidence presented in the case that could be used to establish Mr. Davis's percentage of impairment. Although Mr. Davis presented a report by a psychiatrist, Dr. Braun, who diagnosed Mr. Davis with agoraphobia and major depression, the Office of Judges found that Dr. Braun did not provide an impairment rating. The Office of Judges found that Dr. Casdorff's report was persuasive and that Mr. Davis's benefits were correctly calculated based on Dr. Casdorff's recommendation.

The Board of Review adopted the findings of the Office of Judges and affirmed its Order on July 20, 2011. We agree with the conclusions of the Board of Review Mr. Davis has not provided any evidence that the claims administrator's grant of a 2% permanent partial disability award was not based on an accurate assessment of his degree of whole body impairment.

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 decision of the Board of Review is affirmed.

Affirmed.

ISSUED: June 12, 2013

CONCURRED IN BY:

Chief Justice Brent D. Benjamin
Justice Robin J. Davis
Justice Margaret L. Workman
Justice Menis E. Ketchum
Justice Allen H. Loughry II