

**STATE OF WEST VIRGINIA**

**SUPREME COURT OF APPEALS**

**FILED**

June 6, 2013

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

**JOHN C. HARLESS JR.,  
Claimant Below, Petitioner**

vs.) **No. 11-1368** (BOR Appeal No. 2045833)  
(Claim No. 950010046)

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

**and**

**BROWNING-FERRIS INDUSTRIES OF WV, INC.,  
Employer Below, Respondent**

**MEMORANDUM DECISION**

Petitioner John C. Harless Jr., pro se, appeals the decision of the West Virginia Workers' Compensation Board of Review. The West Virginia Office of Insurance Commissioner, by Anna Faulkner, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated September 12, 2011, in which the Board affirmed an April 8, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's September 29, 2010, decision denying a request to reopen the claim for additional temporary total disability benefits. 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. Harless was working for Browning-Ferris Industries when he injured his lower back on September 6, 1994. He received a permanent partial disability award in October of 2001. On September 29, 2010, the claims administrator denied a request to reopen the claim for additional temporary total disability benefits.

The Office of Judges affirmed the claims administrator's decision, and held that the request to reopen was time barred under West Virginia Code § 23-4-16(a)(2) (2005). Mr. Harless disagrees and requests that the claim be reopened and temporary total disability benefits granted.

Under West Virginia Code § 23-4-16(a)(2), in order to reopen "in any claim in which an award of permanent disability was made, any request must be made within five years of the date of the initial award." As noted by the Office of Judges, Mr. Harless received a permanent partial disability award in October of 2001. Thus, the Office of Judges found that his request to reopen the claim is time barred under West Virginia Code § 23-4-16(a)(2). The Board of Review reached the same reasoned conclusions in its decision of September 12, 2011. We agree with the reasoning and conclusions of the Board of Review.

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 6, 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