

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

June 6, 2013

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

RONALD G. KIDD,
Claimant Below, Petitioner

vs.) **No. 11-1380** (BOR Appeal No. 2045648)
(Claim No. 2005038345)

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

and

MYSTIC, LLC,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Ronald G. Kidd, by Reginald Henry, his attorney, 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 a February 28, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the claims administrator's December 1, 2009, decision and granted Mr. Kidd a 6% permanent partial disability for his left knee, minus any permanent partial disability award previously received. 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. Kidd worked for Mystic, LLC when he injured his left knee while at work on April 9, 2005. The record demonstrates that he has received a permanent partial disability award, but the amount of the award is not clear. On December 1, 2009, the claims administrator granted Mr. Kidd a 3% permanent partial disability award for his compensable injury based on the report by Dr. Padmanaban.

The Office of Judges reversed the claims administrator's decision, and granted Mr. Kidd a 6% permanent partial disability award minus any permanent partial disability award previously received. Mr. Kidd disagrees with this finding and asserts that he is entitled to a 10% permanent partial disability award based on the report by Dr. Walker. The West Virginia Office of Insurance Commissioner maintains that the preponderance of the evidence establishes that Mr. Kidd only suffers from 6% whole person impairment attributable to the compensable injury. Dr. Padmanaban recommended 3% whole person impairment for the compensable injury. Dr. Walker evaluated Mr. Kidd and found that he had 10% whole person impairment resulting from the left knee injury. Dr. Bachwitt concluded that Mr. Kidd had 6% whole person impairment for the left knee, and noted that any previous awards should be deducted. Dr. Bachwitt also noted that he was unable to corroborate Dr. Walker's findings, and that Dr. Padmanaban did not appear to correctly apply the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, (4th ed. 1993).

In reversing the claims administrator's decision, the Office of Judges concluded that Dr. Bachwitt's evaluation was the more reliable evidence of Mr. Kidd's whole person impairment. It noted that Dr. Walker's findings were uncorroborated by the remainder of the record. The Office of Judges also noted that Dr. Padmanaban's procedure was not in accordance with the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, (4th ed. 1993). The Office of Judges concluded that the preponderance of the evidence established that Mr. Kidd suffered from 6% whole person impairment attributable to the compensable left knee injury. The Board of Review reached the same reasoned conclusions in its September 12, 2011, Order. 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