

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

November 22, 2013

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

ROCKY A. WILEY,
Claimant Below, Petitioner

vs.) **No. 12-0306** (BOR Appeal No. 2046447)
(Claim No. 2003053491)

EASTERN ASSOCIATED COAL CORPORATION,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Rocky A. Wiley, by John Shumate Jr., his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Eastern Associated Coal Corporation, by Robert Busse, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated February 21, 2012, in which the Board affirmed a September 28, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's July 6, 2010, decision granting Mr. Wiley a 5% psychiatric 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. Wiley was injured on May 19, 2003, when he fell off an excavator, and the claim was initially held compensable for sprain/strain of the lumbar region and concussion with coma, unspecified, for which he received a permanent partial disability award. On June 16, 2005, the Office of Judges added depression as a compensable component of the claim. Mr. Wiley has undergone three independent medical evaluations to determine the amount of permanent impairment resulting from his compensable depression. On April 22, 2010, Dr. Weise found that there is no evidence of organic brain damage and recommended a 5% psychiatric permanent

partial disability award. On February 1, 2011, Dr. Faheem recommended a 10% psychiatric permanent partial disability award. On May 2, 2011, Dr. Casdorff found that the 5% psychiatric permanent partial disability award recommended by Dr. Weise was more than sufficient, and noted that many of the symptoms present during Dr. Weise's evaluation had improved. Mr. Wiley was granted a 5% psychiatric permanent partial disability award by the claims administrator on July 6, 2010.

In its decision affirming the July 6, 2010, claims administrator's decision, the Office of Judges held that Mr. Wiley sustained 5% psychiatric impairment as a result of the May 19, 2003, injury. Mr. Wiley disputes this finding and asserts, per the opinion of Dr. Faheem, that he is entitled to an additional 5% psychiatric permanent partial disability award, for a total award of 10%.

The Office of Judges found that Dr. Weise's and Dr. Casdorff's reports are more persuasive than the report of Dr. Faheem. The Office of Judges further found that Dr. Faheem failed to apportion for the non-work-related factors contributing to Mr. Wiley's depression, which Dr. Faheem specifically noted in his report. The Board of Review reached the same reasoned conclusions in its decision of February 21, 2012. 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: November 22, 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