

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

FILED

June 29, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

ROGER D. COLLIER, Petitioner

vs.) **No. 10-4026 (BOR Appeal No. 2044706)**
(Claim No. 930052976)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
VERIZON, WEST VIRGINIA, INC., Respondent**

MEMORANDUM DECISION

Petitioner, Roger D. Collier, by John C. Blair, his attorney, appeals the Board of Review order granting an 8% permanent partial disability award. Verizon, West Virginia, Inc. (hereinafter “Verizon”), by Marion E. Ray, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers’ Compensation Board of Review Final Order dated December 7, 2010, in which the Board affirmed a June 4, 2010, Order of the Workers’ Compensation Office of Judges. In its Order, the Office of Judges reversed the claims administrator and granted Mr. Collier an 8% permanent partial disability award. The appeal was timely filed by Mr. Collier and a response was filed by Verizon, West Virginia, Inc. 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 Court determines that there is no prejudicial error. This case does not present a new or significant question of law. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

The Board of Review granted Mr. Collier an 8% permanent partial disability award for Mr. Collier’s lumbar spine injury. Mr. Collier asserts he is entitled to an additional 3% permanent partial

disability award based upon Dr. Victor Poletajev's independent medical evaluation report. On examination, Dr. Poletajev opined according to West Virginia Code of State Rules § 85-20-C, Mr. Collier's injuries appropriately placed him into Category III, with an appropriate impairment of 11%. This finding was based upon Dr. Poletajev's opinion that Mr. Collier suffers from radiculopathy resulting from the lumbar spine injury. Mr. Collier asserts the Board of Review failed to give the appropriate weight of evidence to Dr. Poletajev's report, instead relying on Dr. Paul Bachwitt's report finding 8% impairment. Both Dr. Bachwitt and Dr. Prasadarao B. Mukkamala failed to find any evidence of radiculopathy.

The Office of Judges considered the three independent medical evaluations and opined Mr. Collier was entitled to an 8% permanent partial disability award, and reversed the claims administrator's order granting Mr. Collier a 6% permanent partial disability award. (June 4, 2010, Office of Judges Order, p. 4). Dr. Poletajev's report was found to contain incorrect information and was found less than persuasive. The OoJ found that, "Dr. Poletajev wrongly switched columns and placed [Mr. Collier] in the incorrect category when applying Rule 20." Dr. Mukkamala's report was also found less persuasive and inaccurate due to Dr. Mukkamala failing to find any impairment under Table 75, American Medical Association's, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993).

Dr. Bachwitt's report was found to be clear, concise, and reliable, and persuasive. In the report prepared by Dr. Bachwitt, Mr. Collier was found to have an 8% impairment resulting from the lumbar spine injury. Based upon this report, the Office of Judges granted Mr. Collier an 8% permanent partial disability award, an increase of 2% from the claims administrator's findings of impairment. The Board of Review reached the same reasoned conclusion in affirming the Office of Judges in its decision of December 7, 2010.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear statutory provision nor is the decision based upon the Board's material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the Court affirms the Board of Review Order.

Affirmed.

ISSUED: June 29, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh