

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

BRYAN E. LUSK, Petitioner

December 9, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 101291 (BOR Appeal No. 2044177)
(Claim No. 2006066582)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
MYSTIC, LLC, Respondent

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated September 7, 2010, in which the Board affirmed a February 23, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the Claims Administrator's July 15, 2008, Order granting claimant an 18% permanent partial disability award. The appeal was timely filed by the petitioner and a response was filed by the Employer. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this matter is appropriate for consideration under the Revised Rules. Having considered the petition 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 affirmed the holding that the claimant had been fully compensated by an 18% permanent partial disability award. Petitioner disputes this finding and argues it was an error to accept Dr. Mukkamala's report as more persuasive than the reports of Drs. Guberman and Kominsky. Moreover, petitioner asserts that the Office of Judges failed to adequately explain their basis for accepting Dr. Mukkamala's report.

In its Order affirming the Claims Administrator's permanent partial disability award, the Office of Judges considered each of the submitted medical reports. The Office of Judges noted that Drs. Guberman, Kominsky and Bailey added a diagnosis that was not held compensable in the claim. (February 23, 2010, Office of Judges Order, p. 10). Dr. Mukkamala considered the correct diagnosis in his evaluation and the Office of Judges found his report to be the most persuasive. *Id.* at p. 11. The Board of Review reached the same reasoned conclusions in affirming the Office of Judges in its decision of September 7, 2010.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of constitutional or statutory provision, clearly the result of erroneous conclusions of law, or is based upon the Board's material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the Board of Review's September 7, 2010, Order is affirmed.

Affirmed.

ISSUED: December 9, 2011

CONCURRED IN BY:

Chief Justice Margaret Workman
Justice Robin J. Davis
Justice Brent D. Benjamin
Justice Menis E. Ketchum
Justice Thomas E. McHugh