

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

ROBERT G. THOMAS, Petitioner

vs.) **No. 11-0009 (BOR Appeal No. 2044732)**
(Claim No. 2008030058)

FILED

November 16, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
BERT WOLFE FORD, INC., Respondent**

MEMORANDUM DECISION

Petitioner, Robert G. Thomas, by Patrick K. Maroney, appeals the West Virginia Workers Compensation Board of Review Order granting a 14% permanent partial disability award. Bert Wolfe Ford, Inc., by T. Jonathan Cook, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated December 8, 2010, in which the Board affirmed a June 16, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's July 8, 2009, Order, granting Mr. Thomas a 14% permanent partial disability award. 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 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.

Mr. Thomas sustained a work-related back injury on February 2, 2008, when his shoe caught on a rivet, and he fell backwards. His claim was held compensable for a back contusion and neck sprain / strain. Relatedly, Mr. Thomas sustained a prior compensable injury in October of 2004 for which he was awarded a 7% permanent partial disability award.

Following treatment for the subject injury, Mr. Thomas underwent an independent medical evaluation by Dr. Prasadarao Mukkamala. Dr. Mukkamala found 8% cervical spine impairment and 13% lumbar spine impairment. Due to Mr. Thomas's prior back injury, however, the current lumbar spine impairment was reduced to 6%. These impairment findings were combined to equal 14% whole person impairment, and this report served as the basis for the claims administrator's grant of a 14% permanent partial disability award.

Mr. Thomas appealed this award, and he underwent an independent medical examination by Dr. Bruce Guberman. Dr. Guberman similarly found 8% cervical spine impairment, but he also found 8% impairment to Mr. Thomas's lumbar spine. Dr. Guberman made no apportionment for Mr. Thomas's prior back injury. His findings combined for a 15% whole person impairment that Dr. Guberman related to the subject injury.

The Office of Judges, in reaching its decision to affirm the claims administrator's grant of a 14% permanent partial disability award, noted that Dr. Mukkamala "correctly took into consideration the 7% award for a prior back injury." Because Dr. Guberman "erroneously failed to take into consideration," Mr. Thomas's prior award, the Office of Judges found Dr. Mukkamala's report to be the most persuasive and convincing. The Board of Review reached the same reasoned conclusion in affirming the order of the Office of Judges in its December 8, 2010 decision.

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 based upon the Board's material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the grant of a 14% permanent partial disability award is affirmed.

Affirmed.

ISSUED: November 16, 2012

CONCURRED IN BY:

Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh

DISSENTING:

Chief Justice Menis E. Ketchum