

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

November 19, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

ROBERT I. SPARKS, Petitioner

vs.) **No. 11-0456** (BOR Appeal No. 2044995)
(Claim No. 2009050039)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
FRASURE CREEK MINING, LLC, Respondent**

MEMORANDUM DECISION

Petitioner Robert I. Sparks, by John C. Blair, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Frasure Creek Mining, LLC, by Nathaniel A. Kuratomi, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated February 22, 2011, in which the Board affirmed an August 20, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's Order of April 30, 2009, closing the claim and finding an 8% permanent partial disability impairment. 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.

On June 27, 2008, Mr. Sparks was driving a rock truck for his then-employer, Frasure Creek Mining, when a dozer ran into the truck, injuring him. The claims administrator found that Mr. Spark's sprain/strain of the neck was a compensable injury as a result of the accident. In November of 2008, Mr. Sparks was examined by Dr. Jerry Scott, who determined that Mr. Sparks had achieved maximum medical improvement, and that he had an 8% permanent partial disability impairment. The claims administrator adopted Dr. Scott's findings for 8% permanent partial disability and closed the claim.

On protest to the Office of Judges, Mr. Sparks presented the September of 2009 report of Dr. Bruce A. Guberman, who found a total of 15% permanent partial disability impairment, essentially based upon his finding that cervical radiculopathy had resulted from the injury, which Dr. Scott did not find. Dr. P.B. Mukkamala performed an independent medical evaluation in 2010 and reported that claimant had 8% permanent partial disability impairment, but no radiculopathy. The Office of Judges considered the reports of the three doctors and determined that Dr. Guberman's finding of radiculopathy from the compensable injury was not supported by the record and affirmed the claims administrator's finding of 8% permanent partial disability impairment of the cervical spine. The Board of Review reached the same reasoned conclusion in affirming the February 22, 2011, Order of the Office of Judges.

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 19, 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