

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

June 6, 2013

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

DANIEL P. MCNEAL,
Claimant Below, Petitioner

vs.) **No. 11-1373** (BOR Appeal No. 2045976)
(Claim No. 2006207489)

APPALACHIAN POWER COMPANY,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Daniel P. McNeal, by William B. Gerwig III, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Appalachian Power Company, by Henry Bowen, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated September 20, 2011, in which the Board affirmed a May 20, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's April 20, 2010, decision denying Mr. McNeal an additional permanent partial disability award for his right carpal tunnel syndrome. 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. McNeal worked for Appalachian Power Company as a telephone lineman. As a result of his employment, he developed right carpal tunnel syndrome. On November 15, 2006, he received a 2% permanent partial disability award. Subsequently, the claims administrator denied a request for an additional permanent partial disability award, and found that Mr. McNeal was fully compensated by the prior 2% permanent partial disability award.

The Office of Judges affirmed the claims administrator's Order, and concluded that the evidence did not establish that Mr. McNeal was entitled to an additional permanent partial disability award. On appeal, Mr. McNeal argues that under *Davies v. West Virginia Office of Ins. Comm'r*, 227 W.Va. 330, 708 S.E.2d 524 (2011), it was incorrect for Drs. Mukkamala and Guberman to reduce his whole body impairment according to West Virginia Code of State Rules § 85-20 (2006), and therefore he is entitled to an additional 5% permanent partial disability award. Appalachian Power Company maintains that Dr. Mukkamala's findings are supported by the preponderance of the evidence, and that *Davies v. West Virginia Office of Ins. Comm'r*, 227 W.Va. 330, 708 S.E.2d 524 (2011) does not apply.

In *Davies v. West Virginia Office of Ins. Comm'r*, 227 W.Va. 330, 708 S.E.2d 524 (2011), this Court held that West Virginia Code of State Rules § 85-20-64.5 (2004) is invalid as applied to Table 16 of the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, (4th ed. 1993). As noted by the Office of Judges, *Davies* is not an issue in this case. The Office of Judges noted that Dr. Mukkamala found that Mr. McNeal's decreased sensation due to carpal tunnel syndrome was forgotten during activity, while Dr. Guberman found that it interferes with Mr. McNeal's activity. It further noted that Mr. McNeal returned to work six weeks after right carpal tunnel release surgery, and continued to work until quitting for a reason unrelated to right carpal tunnel syndrome. The Office of Judges concluded that the evidence supported only the prior 2% permanent partial disability award. The Board of Review reached the same reasoned conclusions in its decision of September 20, 2011. 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: June 6, 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