

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

November 22, 2013

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

**RICHARD A. GERRARD,
Claimant Below, Petitioner**

vs.) **No. 12-0311** (BOR Appeal No. 2046326)
(Claim No. 2002015259)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER
Commissioner Below, Respondent**

and

**HARRISON COUNTY COMMISSION,
Employer Below, Respondent**

MEMORANDUM DECISION

Petitioner Richard A. Gerrard, pro se, appeals the decision of the West Virginia Workers' Compensation Board of Review.

This appeal arises from the Board of Review's Final Order dated February 2, 2012, in which the Board affirmed a July 22, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's November 4, 2010, decisions declaring that an overpayment of permanent partial disability benefits has occurred, and denying Mr. Gerrard's request to reopen the claim for further consideration of permanent partial disability benefits. 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. Gerrard was injured on August 16, 2001, when he fell off a porch while working as an animal control officer. The instant case arises from two separate November 4, 2010, claims administrator's decisions declaring that there has been an overpayment of permanent partial disability benefits and denying a reopening of the claim for further consideration of permanent partial disability benefits. In its Order affirming the November 4, 2010, claims administrator's decisions, the Office of Judges held that an overpayment of permanent partial disability benefits has occurred and further held that Mr. Gerrard is not entitled to a reopening of the claim for permanent partial disability benefits.

The November 4, 2010, claims administrator's decision regarding an overpayment of permanent partial disability benefits indicates that a 20% permanent partial disability award was erroneously paid. West Virginia Code § 23-4-1d(d) (2005) allows for the recovery of overpayments for any amount overpaid. As noted by the Office of Judges, there is no indication that the claims administrator's determination that an overpayment has occurred is incorrect.

West Virginia Code § 23-4-16(a)(2) (2005) states that in a claim where an award of permanent impairment has been made, reopening requests must be made within five years of the date of the initial award. The Office of Judges found that Mr. Gerrard's initial permanent partial disability award was granted on January 6, 2003. The Office of Judges then found that he did not file a request to reopen the claim until October 21, 2010, which is beyond the five-year limitation imposed by West Virginia Code § 23-4-16(a)(2). The Board of Review reached the same reasoned conclusions in its decision of February 2, 2012. 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: November 22, 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