

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

November 22, 2013

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

LEE R. WALKER,
Claimant Below, Petitioner

vs.) **No. 12-0325** (BOR Appeal No. 2046424)
(Claim No. 2005009878)

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

and

STAR MANUFACTURING, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Lee R. Walker, by John Blair, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. The West Virginia Office of Insurance Commissioner, by David Stuart, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated February 16, 2012, in which the Board affirmed a September 2, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's May 12, 2011, decision denying Mr. Walker's request to reopen the claim on a permanent partial disability bases. 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. Walker sustained multiple injuries on September 1, 2004, while working for Star Manufacturing. On August 12, 2005, he was granted a 9% permanent partial disability award based on an independent medical evaluation performed by Dr. Grady. On December 15, 2006, the claim was held compensable for headaches, depressive disorder, anxiety state, open wound of the face, mandible fracture, and unspecified closed left ankle fracture. On May 12, 2011, the claims administrator denied Mr. Walker's request to reopen the claim on a permanent partial disability basis based on a finding that the request is time-barred pursuant to West Virginia Code § 23-4-16(a)(2) (2005).

In its Order affirming the May 12, 2011, claims administrator's decision, the Office of Judges found that there is insufficient evidence included in the record to overturn the claims administrator's decision. Mr. Walker disputes this finding and asserts that he is entitled to an additional independent medical evaluation and a neuropsychiatric evaluation.

As noted by the Office of Judges, the evidentiary record in the instant case is sparse. The Office of Judges noted that Mr. Walker relies on an Order from this Court dated July 29, 2010, which found that depressive disorder, headaches, anxiety, and cervical strain are compensable components of the claim, and which further directed the claims administrator to pay for medical treatment related to those conditions. The Office of Judges found that the July 29, 2010, Order is not in the evidentiary record. The Office of Judges noted that it may only make decisions based upon the evidence of record, and found that based upon the evidentiary record it cannot be concluded that the claims administrator's decision was erroneous. The Board of Review reached the same reasoned conclusions in its decision of February 16, 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 Menis E. Ketchum
Justice Allen H. Loughry II

DISSENTING:

Justice Margaret L. Workman