

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

October 7, 2015

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

CHARLES BECKELHIMER,
Claimant Below, Petitioner

vs.) **No. 14-0272** (BOR Appeal No. 2048757)
(Claim No. 2011024452)

BOB'S TRUCK & AUTO REPAIR, LLC,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Charles Beckelhimer, by Reginald D. Henry, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Bob's Truck & Auto Repair, LLC, by Jeffery B. Brannon, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated February 26, 2014, in which the Board affirmed an August 29, 2013, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's June 29, 2011, decision granting a 0% permanent partial disability award. 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. Beckelhimer, a welder for Bob's Auto & Truck repair, LLC, was running to avoid a truck on January 6, 2011, when he slipped on ice and fell. When he hit the ground he felt pain in his left shoulder, left wrist, and back. Mr. Beckelhimer filed for workers' compensation benefits and his claim was held compensable on January 21, 2011, for a sprain of the left wrist and shoulder. Mr. Beckelhimer first sought treatment from Matthew Nelson, M.D. Mr. Beckelhimer relayed to Dr. Nelson that in 1996 he sustained a wrist fracture to the affected wrist in this claim.

Dr. Nelson ordered injections and physical therapy. Mr. Beckelhimer was seen by Dr. Nelson on April 28, 2011, for a follow-up. Dr. Nelson stated that he was pleased with Mr. Beckelhimer's progress and Mr. Beckelhimer relayed that his shoulder pain had decreased.

On July 14, 2011, the claims administrator approved Mr. Beckelhimer's request to change treating physicians. Mr. Beckelhimer began seeing David Shamblin, M.D., on July 26, 2011. Dr. Shamblin noted that Mr. Beckelhimer was being seen for his work injury as well as his November of 2011 car accident, which was not work-related. Mr. Beckelhimer also relayed to Dr. Shamblin that he suffered a broken wrist previously and also had an ulnar nerve transposition surgery. Dr. Shamblin believed that the ulnar nerve was aggravated during his physical therapy session related to the accident.

On June 16, 2011, Prasadarao Mukkamala, M.D., performed an independent medical evaluation on Mr. Beckelhimer. Dr. Mukkamala opined that Mr. Beckelhimer was at his maximum degree of medical improvement and suffered no ratable whole person impairment related to the injury. On June 29, 2011, the claims administrator adopted Dr. Mukkamala's report and granted Mr. Beckelhimer a 0% permanent partial disability award. Mr. Beckelhimer protested.

On January 7, 2013, Mr. Beckelhimer was seen by Bruce Guberman, M.D., for an independent medical evaluation. Dr. Guberman determined that Mr. Beckelhimer was at his maximum degree of medical improvement and suffered from 3% whole person impairment related to the injury. He found 1% upper extremity impairment for range of motion abnormalities in flexion and extension of the left wrist. He also calculated 3% upper extremity impairment for range of motion abnormalities in radial and ulnar deviation of the left wrist. Dr. Guberman found 3% upper extremity impairment for range of motion abnormalities in flexion and extension of the left shoulder. Dr. Guberman calculated 1% upper extremity impairment for range of motion abnormalities in abduction and adduction of the left shoulder. Dr. Guberman found 2% upper extremity impairment for mild range of motion abnormalities in internal and external rotation of the left shoulder. He then combined the shoulder and wrist impairment and suggested 6% whole person impairment for the January 6, 2011, injury. Dr. Guberman then noted that Mr. Beckelhimer was involved in a car accident in November of 2011, which injured his left shoulder and wrist. Dr. Guberman also noted that he had been in another car accident sometime in 2005, which also injured his left arm. As a result, Dr. Guberman apportioned half of the 6% whole person impairment to the work-related injury.

The Office of Judges determined that Mr. Beckelhimer was not entitled to any more than a 0% permanent partial disability award. The Office of Judges determined that Dr. Mukkamala's report was more persuasive than Dr. Guberman's report because it properly apportioned prior injuries and was more consistent with the other evidence of record. The Office of Judges noted that his work-related sprain was minor compared with his fracture in 1996, his car accident in 2005, and his car accident in 2011. The Office of Judges also noted Dr. Nelson had seen improvement in his shoulder while acting as his treating physician and that Mr. Beckelhimer reported improvement in his shoulder. Because the evidence supported Dr. Mukkamala's assertion that he suffered from no ratable impairment related to this injury, the Office of Judges

affirmed the claims administrator's 0% permanent partial disability award. The Board of Review adopted the findings of the Office of Judges and affirmed its Order.

We agree with the findings of the Office of Judges and conclusions of the Board of Review, which found Dr. Mukkamala's report to be persuasive. The car accident suffered in 2012, which hurt the affected side of his body, was after Dr. Mukkamala had already assessed his work-related injury and before Dr. Guberman had a chance to examine the injury. Therefore, Dr. Mukkamala was in a better position to assess the level of impairment suffered by the work-related injury. Furthermore, Dr. Mukkamala's assessment is more persuasive when considered with all the other evidence of record. Dr. Nelson found improvement with physical therapy and even Mr. Beckelheimer noted that his pain had decreased. Because Dr. Mukkamala's report is consistent with the evidence, the Office of Judges and Board of Review were not in error to adopt it.

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: October 7, 2015

CONCURRED IN BY:

Chief Justice Margaret L. Workman
Justice Robin J. Davis
Justice Brent D. Benjamin
Justice Menis E. Ketchum
Justice Allen H. Loughry II