

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

**DAVID T. MOUNTS,
Claimant Below, Petitioner**

**vs.) No. 15-0274 (BOR Appeal No. 2049300)
(Claim No. 2010110128)**

FILED

March 22, 2016
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

**PRESTON MEMORIAL HOSPITAL CORPORATION,
Employer Below, Respondent**

MEMORANDUM DECISION

Petitioner David T. Mounts, by John Robert Weaver, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Preston Memorial Hospital Corporation, by James Heslep, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated February 26, 2015, in which the Board affirmed a February 26, 2014, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's March 12, 2012, decision granting Mr. Mounts a 5% 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. Mounts worked for Preston Memorial Hospital Corporation when he strained his low back on October 3, 2009. Three independent medical evaluations were performed on Mr. Mounts. First, Jerry W. Scott, M.D., found that Mr. Mounts has 5% impairment. On March 12, 2012, the claims administrator granted Mr. Mounts a 5% permanent partial disability award based on the report of Dr. Scott. Second, Bruce Guberman, M.D., recommended Mr. Mounts receive an additional 3% permanent partial disability award for this injury. Lastly, Prasadarao B.

Mukkamala, M.D., opined that Mr. Mounts has 5% impairment for this injury. Mr. Mounts is currently requesting an additional 3% permanent partial disability award for a total of 8%.

The Office of Judges affirmed the claims administrator's decision and found that Mr. Mounts was correctly awarded a 5% permanent partial disability award. On appeal, Mr. Mounts disagrees and asserts that Dr. Guberman conducted the most thorough evaluation. Therefore, Mr. Mounts argues that he is entitled to an additional 3% permanent partial disability award for a total of 8%. Preston Memorial Hospital maintains that Mr. Mounts has failed to show the Board of Review committed an error in its Order and that the Board of Review and the Office of Judges properly granted Mr. Mounts a 5% permanent partial disability award.

The Office of Judges noted that three independent medical evaluations were performed and that both Dr. Mukkamala and Dr. Scott concur that Mr. Mounts has 5% impairment. The Office of Judges stated that neither Dr. Scott nor Dr. Mukkamala was able to approximate the range of motion deficits in Dr. Guberman's report. Therefore, the Office of Judges found Dr. Mukkamala's and Dr. Scott's reports were the most credible and preponderant evidence and thus affirmed the claims administrator's decision awarding Mr. Mounts a 5% permanent partial disability award.

This Court agrees with the conclusions of the Board of Review and the findings of the Office of Judges. Dr. Mukkamala and Dr. Scott both found that Mr. Mounts had 5% impairment, and both of their reports are credible and reliable. Therefore, this Court finds that Mr. Mounts was properly awarded a 5% permanent partial disability award.

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: March 22, 2016

CONCURRED IN BY:

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

DISSENTING:

Justice Margaret L. Workman