

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

April 12, 2016

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

LAWRENCE D. TRUMAN,
Claimant Below, Petitioner

vs.) **No. 15-0449** (BOR Appeal No. 2050069)
(Claim No. 970035757)

ELKEM METALS, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Lawrence D. Truman, by Robert L. Stultz, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Elkem Metals, Inc., by Ann B. Rembrandt, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated April 15, 2015, in which the Board affirmed a December 8, 2014, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's September 25, 2013, decision granting Mr. Truman 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. Truman worked as a coal miner for Elkem Metals, Inc. The claim was held compensable for occupational pneumoconiosis. Mr. Truman previously received a 5% permanent partial disability award in Claim No. 930044219 and a 15% permanent partial disability award in this claim for occupational pneumoconiosis. The Occupational Pneumoconiosis Board found that Mr. Truman has a total of 25% impairment but only 20% of that impairment is due to his occupation. Mr. Truman is now requesting an additional 20% permanent partial disability award for a total of 40%. The claims administrator granted Mr. Truman an additional 0% permanent

partial disability award in reliance on the Occupational Pneumoconiosis Board's findings and conclusions that he has been fully compensated by his two previously granted permanent partial disability awards totaling 20% for his occupational pneumoconiosis.

The Office of Judges affirmed the claims administrator's decision and found that Mr. Truman has no more than 20% pulmonary impairment attributable to his occupation. It further found that Mr. Truman has been fully compensated by his two prior permanent partial disability awards which totaled 20%. The Board of Review affirmed the Order of the Office of Judges. On appeal, Mr. Truman disagrees and asserts that the Board of Review erred in not granting him an additional 20% permanent partial disability award for a total of 40%. Elkem Metals, Inc., maintains that the Board of Review properly held Mr. Truman has failed to establish he has any more than 20% impairment due to occupational pneumoconiosis.

The Office of Judges found that the studies done by the Occupational Pneumoconiosis Board on August 15, 2013, were valid and showed an overall total of 25% impairment due to occupational pneumoconiosis. However, Mr. Truman has history of wheezing and was treated for pneumonia in the 1990s and in 2000. X-rays showed a minimal degree of occupational pneumoconiosis which was unchanged from previous examinations. Due to Mr. Truman's twenty-year one pack per day smoking history, the suppressed breath sounds, the unchanged x-rays and clinical findings as well as reversibility on bronchodilator testing, Jack Kinder, M.D., and Bradley Henry, M.D., from the Occupational Pneumoconiosis Board, concluded that only 20% was due to occupational pneumoconiosis. The Office of Judges relied on the Occupational Pneumoconiosis Board's findings, and the Board of Review agreed with the Office of Judges' findings and conclusions.

This Court agrees with the findings and conclusions of the Board of Review and the Office of Judges. The Occupational Pneumoconiosis Board's findings and conclusions were reliable and credible. It found that Mr. Truman has a total of 25% impairment but that only 20% impairment is due to his occupation. It further concluded that Mr. Truman has been fully compensated by his two prior permanent partial disability awards for occupational pneumoconiosis that totaled 20%.

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: April 12, 2016

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Allen H. Loughry II