

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

April 12, 2016

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

ROBERT L. JOHNSON,
Claimant Below, Petitioner

vs.) **No. 15-0563** (BOR Appeal No. 2050284)
(Claim No. 2004028491)

AMFIRE, LLC,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Robert L. Johnson, pro se, appeals the decision of the West Virginia Workers' Compensation Board of Review. Amfire, LLC, by Timothy Huffman, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated May 12, 2015, in which the Board affirmed a February 19, 2015, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges modified the claims administrator's September 16, 2014, decision denying Mr. Johnson's request to reopen his claim for a permanent partial disability evaluation. The Office of Judges modified the claims administrator's decision to reflect that Mr. Johnson's request to reopen his claim was denied as untimely filed pursuant to the provisions contained within West Virginia Code § 23-4-16(a)(1) (2005). 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.

On December 30, 2003, Mr. Johnson sustained multiple tooth fractures and facial lacerations after being struck in the face by a component of a piece of equipment he was operating. On January 13, 2004, the claims administrator held the claim compensable for an open wound of the jaw. In the same decision, the claims administrator noted that Mr. Johnson was

unable to return to work for less than four days as a result of the compensable injury; closed the claim on a temporary total disability basis; and informed Mr. Johnson that although he would not be referred for a permanent partial disability evaluation based upon a review of his medical record, he retained the right to request a permanent partial disability evaluation. Additionally, the claims administrator provided Mr. Johnson with instructions concerning the procedure for requesting a permanent partial disability evaluation. On April 14, 2004, the claims administrator issued a decision closing the claim on a permanent partial disability basis because he failed to request a permanent partial disability evaluation. The claims administrator informed Mr. Johnson that his claim remained open regarding any future need for further medical treatment and provided him with instructions concerning any future filings for reopening the closed portions of his claim.

On September 3, 2014, Mr. Johnson filed a request to reopen his claim in order to obtain a permanent partial disability evaluation. The claims administrator denied Mr. Johnson's request to reopen his claim on September 16, 2014. The Office of Judges modified the claims administrator's decision to reflect that Mr. Johnson's request to reopen his claim was denied as untimely filed pursuant to the provisions contained within West Virginia Code § 23-4-16(a)(1). The Board of Review affirmed the reasoning and conclusions of the Office of Judges in its decision dated May 12, 2015.

West Virginia Code § 23-4-16(a)(1) provides that in any claim which is closed without the entry of a permanent partial disability award, any request to reopen the claim must be made within five years of the date of the claim's closure. The Office of Judges properly concluded that pursuant to the language of West Virginia Code § 23-4-16(a)(1), because Mr. Johnson's claim was closed on a permanent partial disability basis on April 14, 2004, he was required to file a request to reopen his claim for a permanent partial disability evaluation by April 14, 2009. As was noted by the Office of Judges, pursuant to the statute, Mr. Johnson's September 3, 2014, request to reopen his claim for the purpose of obtaining a permanent partial disability evaluation was untimely filed.

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