

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

ALFRED ALEXANDER,
Claimant Below, Petitioner

vs.) No. 19-0613 (BOR Appeal No. 2053912)
(Claim No. 2017018011)

MURRAY AMERICAN ENERGY, INC.,
Employer Below, Respondent

FILED

September 15, 2020
EDYTHE NASH GAISER, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Alfred Alexander, by Counsel M. Jane Glauser, appeals the decision of the West Virginia Workers' Compensation Board of Review ("Board of Review"). Murray American Energy, Inc., by Counsel Denise D. Pentino and Aimee M. Stern, filed a timely response.

The issue on appeal is permanent total disability. The claims administrator denied a request to reopen the claim for consideration of a permanent total disability award on July 16, 2018. The Workers' Compensation Office of Judges ("Office of Judges") affirmed the decision in its January 15, 2019, Order. The Order was affirmed by the Board of Review on June 17, 2019.

The Court has carefully reviewed the records, written arguments, and appendices contained in the briefs, and the case is mature for consideration. 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. Alexander, a retired coal miner, completed an application for permanent total disability benefits on November 26, 2017. He stated that he had received the following permanent partial disability awards: 15% for occupational pneumoconiosis, 19% for the back, 7% for the shoulder, and 8% for the knee. Mr. Alexander was retired from his job and was drawing social security retirement benefits. He stated in a March 12, 2018, affidavit that he retired due to his work-related injuries. In a November 5, 2018, statement, Deanna Callarick, Human Resources Supervisor for the employer, stated that Mr. Alexander retired from employment on January 2, 2014. At that time, he had 32.25 years of service and was eligible for the "30 and out pension" as of February 1, 2014.

On July 16, 2018, the claims administrator denied a request to reopen the claim for consideration of a permanent total disability award. The Office of Judges affirmed the decision in its January 15, 2019, Order. It found that Mr. Alexander retired from employment on January 2, 2014, and began receiving Social Security retirement benefits on March 28, 2018. He did not file his permanent total disability application until June 13, 2018. Pursuant to West Virginia Code § 23-4-24(a),

[n]o claimant shall be awarded permanent total disability benefits arising under subdivision (d) or (n), section six of this article or section eight-c of this article who terminates active employment and is receiving full old-age retirement benefits under the Social Security Act, 42 U.S.C. §401 and 402. Any claimant shall be evaluated only for the purposes of receiving a permanent partial disability award premised solely upon the claimant's impairments. This subsection is not applicable in any claim in which the claimant has completed the submission of his or her evidence on the issue of permanent total disability prior to the later of the following: Termination of active employment or the initial receipt of full old-age retirement benefits under the Social Security Act. Once the claimant has terminated active employment and has begun to receive full old-age social security retirement benefits, the claimant may not produce additional evidence of permanent total disability nor shall the claim be remanded for the production of the evidence.

The Office of Judges ultimately concluded that Mr. Alexander is ineligible for a permanent total disability award due to his retirement from active employment and his receipt of Social Security retirement benefits. The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its Order on June 17, 2019.

After review, we agree with the reasoning and conclusions of the Office of Judges as affirmed by the Board of Review. Pursuant to the plain language of West Virginia Code § 23-4-24(a), Mr. Alexander is ineligible for a permanent total 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: September 15, 2020

CONCURRED IN BY:

Chief Justice Tim Armstead
Justice Margaret L. Workman
Justice Elizabeth D. Walker
Justice Evan H. Jenkins
Justice John A. Hutchison