

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

**FREDDIE E. MARCUM,
Claimant Below, Petitioner**

FILED
December 17, 2013
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) **No. 12-0596** (BOR Appeal No. 2046713)
(Claim No. 2010116360)

**WAYNE COUNTY BOARD OF EDUCATION,
Employer Below, Respondent**

MEMORANDUM DECISION

Petitioner Freddie E. Marcum, appearing pro se, appeals the decision of the West Virginia Workers' Compensation Board of Review. The Wayne County Board of Education, by Matthew L. Williams, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated April 20, 2012, in which the Board affirmed a November 29, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's July 22, 2010, decision granting Mr. Marcum no 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. Marcum worked as a custodian for the Wayne County Board of Education. On December 1, 2009, he suffered an injury to his back while unloading tables from a truck. The claim was held compensable for sacroiliac sprain/strain, thoracic disc herniation, and lumbar sprain/strain. On April 5, 2010, Dr. Monderewicz concluded that Mr. Marcum had a 10% whole person impairment with 5% for the thoracic and 5% for the lumbar. Dr. Mukkamala recommended a 0% impairment. On July 21, 2010, and concluded that Mr. Marcum had been fully compensated by his prior permanent partial disability award of 13%. The claims administrator granted no permanent partial disability award based on the April 15, 2009,

evaluation by Dr. Monderewicz, who found that Mr. Marcum had a 10% impairment in this claim that had been fully compensated by his prior permanent partial disability award of 13%.

The Office of Judges affirmed the claims administrator's decision and held that Mr. Marcum had a 10% impairment for his lumbar and thoracic components in this claim and had received a prior permanent partial disability award of 13% for these same components in a prior claim. Therefore, it concluded that Mr. Marcum had been adequately compensated. Mr. Marcum disagrees and asserts that all of his evidence was not taken into consideration. The Wayne County Board of Education maintains that Mr. Marcum's 10% impairment has been fully compensated by his prior permanent partial disability award of 13%.

The Office of Judges granted Mr. Marcum no additional permanent partial disability award. The Office of Judges concluded that Mr. Marcum's claim is not entitled to further evaluation because the diagnosis of thoracic disc herniation was considered by Dr. Monderewicz before it was added as a compensable component on May 28, 2010. The Office of Judges found that Mr. Marcum's prior permanent partial disability award of 13% was for the lumbar and thoracic components. Dr. Mukkamala recommended a 0% impairment and concluded that the 10% recommended by Dr. Monderewicz for the thoracic and lumbar components has been fully compensated by Mr. Marcum's prior permanent partial disability award of 13%. The Office of Judges held that the 10% impairment for the thoracic and lumbar components was fully compensated by Mr. Marcum's prior permanent partial disability award of 13%, and that he is not entitled to any additional permanent partial disability award. The Board of Review reached the same reasoned conclusions in its decision of April 20, 2012. We agree with the reasoning and conclusions of the Board of Review.

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: December 17, 2013

CONCURRED IN BY:

Chief Justice Brent D. Benjamin

Justice Robin J. Davis

Justice Margaret L. Workman

Justice Menis E. Ketchum

Justice Allen H. Loughry II