

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

January 14, 2014

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

DAVID K. SHANKLIN,
Claimant Below, Petitioner

vs.) **No. 12-0643** (BOR Appeal No. 2046619)
(Claim No. 2006210553)

ARACOMA COAL COMPANY, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner David K. Shanklin, by John Blair, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Aracoma Coal Company, Inc., by Paul Pinson, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated April 26, 2012, in which the Board affirmed an October 19, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's October 27, 2010, decision granting Mr. Shanklin a 6% 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. Shanklin developed compensable bilateral carpal tunnel syndrome during the course of his employment as an underground coal miner with Aracoma Coal Company. He has undergone two independent medical evaluations to determine the amount of permanent impairment resulting from his carpal tunnel syndrome. On October 14, 2010, Dr. Grady examined Mr. Shanklin and recommended a 3% permanent partial disability award for each hand, for a total award of 6%. Based upon Dr. Grady's independent medical evaluation, the claims administrator granted Mr. Shanklin a 6% permanent partial disability award on October

27, 2010. On March 7, 2011, Dr. Poletajev evaluated Mr. Shanklin and recommended a 6% permanent partial disability award for each hand, for a total award of 12%. In a letter dated September 1, 2011, Dr. Grady indicated that he had reviewed Dr. Poletajev's report and stated that Dr. Poletajev's physical examination was largely consistent with his own findings, and that it appears that Dr. Poletajev's report differs from his because Mr. Shanklin self-reported increased symptoms at the time of Dr. Poletajev's evaluation.

In its Order affirming the October 27, 2010, claims administrator's decision, the Office of Judges held that the evidence of record demonstrates that Mr. Shanklin has 6% whole person impairment as a result of his bilateral carpal tunnel syndrome. Mr. Shanklin disputes this finding and asserts, per the opinion of Dr. Poletajev, that he is entitled to a total permanent partial disability award of 12% for his bilateral carpal tunnel syndrome.

The Office of Judges noted that the only substantial difference between the evaluations of Dr. Grady and Dr. Poletajev is Mr. Shanklin's increased complaints that his symptoms interfere significantly with his routine activities during the evaluation of Dr. Poletajev. Further, the Office of Judges found that Mr. Shanklin retired in December of 2005, and that therefore there was no additional occupational exposure to activities that may pose a risk for the development of carpal tunnel syndrome between the evaluations of Dr. Grady and Dr. Poletajev. Finally, the Office of Judges found that Dr. Grady's estimation of Mr. Shanklin's whole person impairment best correlates with the history of Mr. Shanklin's condition and with his medical record. The Board of Review reached the same reasoned conclusions in its decision of April 26, 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: January 14, 2014

CONCURRED IN BY:

Chief Justice Robin J. Davis
Justice Margaret L. Workman
Justice Allen H. Loughry II

DISSENTING:

Justice Menis E. Ketchum

Justice Brent D. Benjamin, disqualified