

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

April 14, 2014

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

**WENDELL E. ROLLINS,
Claimant Below, Petitioner**

vs.) **No. 12-1252** (BOR Appeal No. 2046963)
(Claim No. 2008007099)

**MYSTIC, LLC,
Employer Below, Respondent**

MEMORANDUM DECISION

Petitioner Wendell E. Rollins, by Wendle D. Cook, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Mystic, LLC, by H. Dill Battle III, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated September 24, 2012, in which the Board affirmed a February 10, 2012, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's May 21, 2010, decision denying Mr. Rollins's application for a permanent total 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. Rollins worked as an underground coal miner for thirty-six years. During the course of his employment, he received several injuries for which he received permanent partial disability awards. After Mr. Rollins ceased working, he filed an application for permanent total disability benefits based on the sum of his prior disability awards. Ramanathan Padmanaban, M.D., then evaluated Mr. Rollins and found that he was permanently and totally disabled due to his compensable injuries. Dr. Padmanaban found that Mr. Rollins had 30% impairment for his occupational pneumoconiosis. He also found that Mr. Rollins had 36% impairment for his

orthopedic injuries, which he combined with his pneumoconiosis impairment for a 55% whole person impairment rating. The Permanent Total Disability Review Board, however, found that Mr. Rollins had 43% whole person impairment. On May 21, 2010, the claims administrator denied Mr. Rollins's application based on the Review Board's findings. Marsha Bailey, M.D., then reviewed the records in Mr. Rollins's case and agreed with the assessment of the Review Board. Dr. Bailey found that Mr. Rollins had 24% impairment for his orthopedic injuries, which she combined with Mr. Rollins's 30% occupational pneumoconiosis impairment for a 47% whole person impairment rating. Dr. Bailey criticized the findings of Dr. Padmanaban because she found that Dr. Padmanaban had provided a duplicative impairment rating for both Mr. Rollins's right knee injury and right ankle injury. She noted that Dr. Padmanaban had provided separate impairment ratings for Mr. Rollins's extension and flexion deficits in the knee and ankle. On February 10, 2012, the Office of Judges affirmed the claims administrator's decision. The Board of Review then affirmed the Order of the Office of Judges on September 24, 2012, leading Mr. Rollins to appeal.

The Office of Judges concluded that Mr. Rollins failed to show that he had at least 50% whole person impairment upon reevaluation by the Permanent Total Disability Review Board. The Office of Judges found that Mr. Rollins had met the initial threshold to have his claim opened for consideration of a permanent total disability award. However, the Office of Judges determined that Mr. Rollins's had not met the 50% whole person impairment threshold of West Virginia Code § 23-4-6(n)(1) (2005). The Office of Judges found that Dr. Bailey's report was the most persuasive evaluation of Mr. Rollins's whole person impairment and that he did not have 50% whole person impairment. The Office of Judges noted that Dr. Bailey pointed out several errors in Dr. Padmanaban's impairment calculations. The Office of Judges found that Dr. Padmanaban's calculations were incorrect and that his report could not be used to determine Mr. Rollins's whole person impairment. The Board of Review adopted the findings of the Office of Judges and affirmed its Order.

We agree with the conclusions of the Board of Review and the findings of the Office of Judges. Mr. Rollins has not demonstrated that he met the 50% whole person threshold of West Virginia Code § 23-4-6(n)(1). The report of Dr. Bailey showed that Mr. Rollins has suffered 47% whole person impairment, and the Office of Judges was within its discretion in finding that Dr. Bailey's report was the most persuasive evidence of his impairment. The report of Dr. Padmanaban contains several erroneous calculations, and the Office of Judges was within its discretion in not relying on his evaluation.

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 14, 2014

CONCURRED IN BY:

Chief Justice Robin J. Davis
Justice Brent D. Benjamin
Justice Menis E. Ketchum
Justice Allen H. Loughry II

DISSENTING:

Justice Margaret L. Workman