

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

May 5, 2016

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

**KEITH A. MAINS JR.,
Claimant Below, Petitioner**

vs.) **No. 15-0617** (BOR Appeal No. 2050082)
(Claim No. 2006003363)

**KEITH A. MAINS JR., DBA MAINS SYSTEMS,
Employer Below, Respondent**

MEMORANDUM DECISION

Petitioner Keith A. Mains Jr., by Stephen New, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Keith A. Mains Jr., DBA Mains Systems, by Bradley Crouser, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated May 20, 2015, in which the Board affirmed a December 3, 2014, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's March 5, 2014, decision granting no additional additional permanent partial disability award for his compensable right shoulder injury. 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. Mains sustained compensable cervical and right shoulder sprains on July 27, 2005, while transporting a refrigerator. He initially underwent three independent medical evaluations during which a recommendation regarding the amount of permanent impairment arising from the compensable injury was provided, and was granted an 8% permanent partial disability award for the cervical sprain and a 0% permanent partial disability award for the right shoulder sprain on September 9, 2010. Four years later, the Office of Judges granted Mr. Mains's request to reopen

his claim for further consideration of permanent partial disability benefits; however, his request was granted only with respect to the right shoulder sprain.

Following the Office of Judges' September 9, 2010, Order granting Mr. Mains a 0% permanent partial disability award for the compensable right shoulder sprain, two additional independent medical evaluations were performed. Julian Chipley, D.C.; Prasadarao Mukkamala, M.D.; and Saghir Mir, M.D., all performed independent medical evaluations and indicated that Mr. Mains did not sustain any permanent impairment as a result of the compensable right shoulder injury. Michael Condaras, D.C., also performed an independent medical evaluation and opined that Mr. Mains sustained 1% whole person impairment as a result of range of motion abnormalities in the right shoulder. Finally, Robert Walker, M.D., performed an independent medical evaluation and opined that Mr. Mains sustained 17% whole person impairment as a result of range of motion abnormalities and neurological deficits in the right shoulder. Following Dr. Walker's evaluation, Rebecca Thaxton, M.D., performed a records review. Dr. Thaxton stated that Dr. Walker was the only evaluating physician to find neurological deficits with respect to the right shoulder. She then opined that the results of Dr. Walker's evaluation do not appear to be valid or reliable.

On March 5, 2014, the claims administrator determined that Mr. Mains sustained 0% whole person impairment as a result of the compensable right shoulder injury. In its Order affirming the claims administrator's decision, the Office of Judges held that Mr. Mains has failed to demonstrate that he should be granted a permanent partial disability award for the compensable right shoulder injury. The Board of Review affirmed the reasoning and conclusions of the Office of Judges in its Order dated May 20, 2015. On appeal, Mr. Mains asserts, per the opinion of Dr. Walker, that he is entitled to a 17% permanent partial disability award for the compensable right shoulder injury.

The Office of Judges noted that in its September 9, 2010, Order granting Mr. Mains a 0% permanent partial disability award for the compensable right shoulder sprain, it considered the reports of Dr. Chipley, Dr. Mukkamala, and Dr. Condaras. Dr. Walker and Dr. Mir both performed their evaluations after the Office of Judges' initial determination that Mr. Mains sustained 0% whole person impairment as a result of the right shoulder injury, with Dr. Walker's evaluation occurring before that of Dr. Mir. Although Dr. Mukkamala's and Dr. Mir's evaluations occurred five years apart, both found that Mr. Mains's range of motion in the right shoulder was normal and both opined that he sustained 0% whole person impairment as a result of the right shoulder injury. When considering Dr. Walker's evaluation, the Office of Judges noted that he opined that Mr. Mains sustained an extraordinary amount of permanent impairment arising from the right shoulder injury in comparison with the other reports of record. Moreover, the Office of Judges noted that Dr. Thaxton reviewed Dr. Walker's independent medical evaluation report and indicated that his report is unreliable. Finally, the Office of Judges concluded that although Mr. Mains sustained a compensable right shoulder injury, the evidence of record fails to establish that he sustained any permanent impairment as a result of that injury. We agree with the reasoning and conclusions of the Office of Judges as affirmed by 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: May 5, 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