

**STATE OF WEST VIRGINIA**

**SUPREME COURT OF APPEALS**

**FILED**

July 17, 2013

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

**JOHN D. WALLS,  
Claimant Below, Petitioner**

vs.) **No. 11-1439** (BOR Appeal No. 2045968)  
(Claim No. 2009064987)

**ARCH COAL, INC.,  
Employer Below, Respondent**

**MEMORANDUM DECISION**

Petitioner John D. Walls, by Bradley Pyles, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Arch Coal, Inc., by Bradley Crouser, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated September 20, 2011, in which the Board affirmed an April 29, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's March 3, 2010, decision granting Mr. Walls a 25% 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. Walls sustained multiple injuries during a roof fall in an underground coal mine on October 17, 2008. The claim was held compensable for open wound of the scalp and forehead; major depression, single episode; post-traumatic stress disorder; sprain/strain of the lumbar region; sprain/strain of the thoracic region; sprain/strain of the shoulders; and bilateral coracoclavicular sprain. Mr. Walls has undergone multiple independent medical evaluations to determine the amount of permanent impairment for these injuries. On June 18, 2009, Dr. Mukkamala found that Mr. Walls sustained 2% whole person impairment for the scalp wound.

On November 19, 2009, Dr. Miller found that he sustained 3% whole person impairment as a result of his psychiatric conditions. On January 21, 2010, Dr. Bachwitt found that Mr. Walls sustained 21% whole person impairment, but did not include impairment for the scalp wound or psychiatric impairment in his assessment. On August 25, 2010, Dr. Guberman found that Mr. Walls sustained 32% whole person impairment, excluding psychiatric impairment.

In its Order affirming the March 3, 2010, claims administrator's decision, the Office of Judges held that Mr. Walls sustained a 25% permanent partial disability as a result of the October 17, 2008, injury. Mr. Walls disputes this finding and asserts, per the opinion of Dr. Guberman, that he is entitled to an additional 8% permanent partial disability award.

When initially granting Mr. Walls a 25% permanent partial disability award, the claims administrator relied on the opinion of Dr. Short, who recommended combining Dr. Miller's 3% recommendation, Dr. Mukkamala's 2% recommendation, and Dr. Bachwitt's 21% recommendation. The Office of Judges found that Dr. Guberman obtained the most limited range of motion measurements of all the evaluations, and further found that he was the only evaluator to assign impairment for dizziness and disequilibrium; neither dizziness nor disequilibrium are compensable components of the claim. The Office of Judges then found that the preponderance of the evidence dictates that the claims administrator's decision be affirmed. The Board of Review reached the same reasoned conclusions in its decision of September 20, 2011. 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: July 17, 2013**

**CONCURRED IN BY:**

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

**DISSENTING:**

Justice Menis E. Ketchum