

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Lloyd W. Johnson v. West Virginia Office of Insurance Commissioner
and Kanawha Stone Company, Inc.

Johnson · No. Nos. 14-0393 & 14-1290; BOR Appeal Nos. 2048754, 2049266 & 2049550; Claim No.
2005041660 · Decided January 7, 2016

SUMMARY

The West Virginia Supreme Court of Appeals affirmed decisions denying Lloyd W. Johnson's requests to reopen his workers' compensation claim for additional permanent partial disability and temporary total disability benefits. The court held that the permanent partial disability request was untimely, that prior reopening denials had become final, and that the record did not support remand concerning an additional lumbar diagnosis.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Justice Robin J. Davis; Justice Brent D. Benjamin; Justice Margaret L. Workman; Justice Allen H. Loughry II; Chief Justice Menis E. Ketchum
JURISDICTION	West Virginia
DECIDED	January 7, 2016
DOCKET	Nos. 14-0393 & 14-1290; BOR Appeal Nos. 2048754, 2049266 & 2049550; Claim No. 2005041660
DISPOSITION	affirmed
PROCEDURAL POSTURE	Claimant appealed consolidated decisions of the West Virginia Workers' Compensation Board of Review affirming Office of Judges orders that denied or dismissed requests to reopen his workers' compensation claim for additional permanent partial disability and temporary total disability benefits.
STANDARD OF REVIEW	The Court reviewed whether the Board of Review's decisions were in clear violation of a constitutional or statutory provision, clearly erroneous as a matter of law, or based on a material misstatement or mischaracterization of the evidentiary record. The Court also applied an abuse-of-discretion standard to the denial of a request to remand for a decision on compensability.

PRECEDENTIAL VALUE	Unpublished memorandum decision; limited precedential value under West Virginia appellate practice.
PARTIES	Lloyd W. Johnson v. West Virginia Office of Insurance Commissioner, Kanawha Stone Company, Inc.

TOPICS

workers compensation administrative law appellate procedure standard of review exhaustion of remedies

PRACTICE AREAS

workers compensation administrative law appellate procedure

QUESTIONS PRESENTED

1. Whether Johnson's 2013 request to reopen his workers' compensation claim for an additional permanent partial disability award was timely under West Virginia Code § 23-4-16(a)(2).
2. Whether Johnson qualified for an exception to the five-year reopening period under *Hammons v. West Virginia Office of the Insurance Commissioner*.
3. Whether Johnson was entitled to reopen the claim for additional temporary total disability benefits despite his failure to protest earlier denials of reopening requests.
4. Whether the case should be remanded for a decision on physicians' requests to add a lumbar disc protrusion as a compensable condition.

HOLDINGS

1. A request to reopen a workers' compensation claim for an additional permanent partial disability award must be made within five years of the initial permanent disability award under West Virginia Code § 23-4-16(a)(2). Johnson's request, filed more than seven years after the initial award, was untimely.
2. Johnson did not qualify for the exception to the five-year reopening period recognized in *Hammons* because his ability to file timely was not hindered by significant litigation delays and no new diagnosis had been added to his claim.
3. A claimant may not relitigate denials of workers' compensation reopening requests after failing to protest those decisions and allowing them to become final.
4. Johnson was not entitled to a remand for a decision on requests to add a lumbar disc protrusion as a compensable condition.

KEY QUOTATIONS

"West Virginia Code § 23 16(a)(2) provides that "in any claim in which an award of permanent disability was made, any request must be made within five years of the date of the initial award." (4)

FACTUAL BACKGROUND

Johnson, a mechanic for Kanawha Stone Company, slipped and fell from a truck on August 28, 2005, injuring his right ankle, back, and right elbow. His claim was held compensable for a lateral malleolus fracture, ankle sprain, traumatic amputation that was later removed, and peroneal tendonitis; a lumbar disc condition was not added as a compensable condition. Johnson received an initial permanent partial disability award on January 13, 2006, but did not seek reopening for an additional permanent partial disability award until February 4, 2013, more than five years later. He also failed to protest earlier denials of requests for temporary total disability and medical benefits, causing those decisions to become final.

PROCEDURAL HISTORY

Johnson sustained a workplace injury in 2005 and received an initial permanent partial disability award on January 13, 2006. His later requests to reopen the claim for temporary total disability benefits and additional medical benefits were denied and became final when he did not protest them. In 2013, he sought reopening for an additional permanent partial disability award; the claims administrator, Office of Judges, and Board of Review denied or affirmed the denials. The Supreme Court consolidated his two appeals and affirmed the Board's November 21, 2014, orders.

DISPOSITION

affirmed

CASES CITED

- Hammons v. West Virginia Office of the Insurance Commissioner, 235 W. Va. 557, 775 S.E.2d 458 (2015)