

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Veronica Myles v. West Virginia United Health System

No. 18-0947 (W. Va. Nov. 1, 2019) · No. No. 18-0947 (BOR Appeal No. 2052941; Claim No. 2009074390) ·
Decided November 1, 2019

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the Board of Review’s denial of Veronica Myles’s request to reopen her workers’ compensation claim for additional permanent partial disability benefits. The court held that the evidence did not establish a prima facie cause for reopening because the cervical-spine issues identified by a later medical evaluation were not new facts and did not support impairment beyond the previously awarded 3%. The decision was issued as a memorandum decision under Rule 21 of the West Virginia Rules of Appellate Procedure.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; Chief Justice Elizabeth D. Walker; Justice Tim Armstead; Justice Evan H. Jenkins; Justice John A. Hutchison; Justice Margaret L. Workman
JURISDICTION	West Virginia
DECIDED	November 1, 2019
DOCKET	No. 18-0947 (BOR Appeal No. 2052941; Claim No. 2009074390)
DISPOSITION	affirmed
PROCEDURAL POSTURE	Claimant appealed the West Virginia Workers’ Compensation Board of Review’s order reversing and vacating the Office of Judges’ decision to reopen her claim for additional permanent partial disability benefits.
STANDARD OF REVIEW	The Board of Review’s decision is affirmed unless it violates a constitutional or statutory provision, rests on an erroneous conclusion of law, or is clearly wrong in light of the evidentiary record, even when all inferences are resolved in favor of the Board’s findings and conclusions.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Veronica Myles v. West Virginia United Health System

TOPICS

workers compensation

administrative law

appellate procedure

standard of review

PRACTICE AREAS

workers compensation

administrative law

appellate procedure

QUESTIONS PRESENTED

1. Whether Myles established prima facie cause and disclosed previously unconsidered facts sufficient to reopen her workers' compensation claim for additional permanent partial disability benefits.
2. Whether the Board of Review clearly erred in reversing the Office of Judges' order reopening the claim.

HOLDINGS

1. Myles failed to satisfy the reopening standard because she did not present previously unconsidered facts establishing prima facie cause for progression or aggravation of the compensable injury or impairment beyond her existing 3% award.
2. The Board of Review did not clearly err in reversing the Office of Judges, and its decision was affirmed.

KEY QUOTATIONS

"For purposes of obtaining a reopening of a workers' compensation claim under the provisions of West Virginia Code § 23-5-1a and § 23-5-1b, a claimant must show a prima facie cause, which means nothing more than any evidence which would tend to justify, but not compel, the inference that there has been a progression or aggravation of the former injury." (2)

"The Board of Review did not err in reversing the May 11, 2018, decision of the Office of Judges because there is no evidence of record supporting additional impairment above the 3% permanent partial disability award already granted in the claim." (3)

FACTUAL BACKGROUND

Myles was struck in the face by a patient's telemetry unit at work on January 11, 2009, and subsequently developed chronic post-traumatic headaches. She received a 3% permanent partial disability award based on an evaluation finding maximum medical improvement. In 2016, a physician opined that the original trauma may have injured her cervical spine and contributed to her headaches, while another evaluator concluded that her current symptoms were primarily attributable to noncompensable, naturally occurring cervical spondylosis. The Board of Review determined that the alleged cervical-spine facts were not new and that the record did not support impairment beyond the existing 3% award.

PROCEDURAL HISTORY

Myles sustained a work injury in 2009 and received a 3% permanent partial disability award for post-traumatic headaches. The claims administrator denied her 2016 request to reopen the claim for additional permanent partial disability benefits. The Office of Judges reversed and ordered reopening, but the Board of Review reversed and vacated that decision. The Supreme Court of Appeals affirmed the Board of Review.

DISPOSITION

affirmed

CASES CITED

- Harper v. State Workmen’s Compensation Commissioner, 160 W. Va. 364, 234 S.E.2d 779 (1977)
- Bostic v. State Compensation Commissioner, 142 W. Va. 484, 96 S.E.2d 481 (1957)

OPINION

PER CURIAM.

STATE OF WEST VIRGINIA SUPREME COURT OF APPEALS VERONICA MYLES, FILED Claimant Below, Petitioner November 1, 2019 EDYTHE NASH GAISER, CLERK SUPREME COURT OF APPEALS vs.) No. 18-0947 (BOR Appeal No. 2052941) OF WEST VIRGINIA (Claim No. 2009074390) WEST VIRGINIA UNITED HEALTH SYSTEM Employer Below, Respondent MEMORANDUM DECISION Petitioner Veronica Myles, by Counsel J. Thomas Greene Jr., appeals the decision of the West Virginia Workers’ Compensation Board of Review (“Board of Review”).

West Virginia United Health System, by Counsel Lisa Warner Hunter, filed a timely response. The issue on appeal is the reopening of the claim on a permanent partial disability basis. On July 19, 2016, the claims administrator denied reopening of the claim.

The Workers Compensation Office of Judges (“Office of Judges”), reversed the claims administrator’s decision and reopened the claim on a permanent partial disability basis by Order dated May 11, 2018. This appeal arises from the Board of Review’s Order dated September 26, 2018, in which the Board of Review reversed and vacated the decision of the Office of Judges.

The Board of Review determined that Ms. Myles is not entitled to reopening of her claim on a permanent partial disability basis. 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. Ms. Myles sustained an injury at work on January 11, 2009, when she was struck in the face with a telemetry unit by a patient.

As a result of the injury, she developed headaches. She was treated by Lori Stahara, PA-C, for her symptoms on June 17, 2011. She was eventually diagnosed with chronic post-traumatic headaches. 1 On August 11, 2011, Ms. Myles was examined by Prasadarao B. Mukkamala, M.D., for an independent medical evaluation. Dr. Mukkamala diagnosed her with a contusion of the face, scalp and neck.

He opined that she reached maximum medical improvement and concluded that she could and should have returned to work by January 31, 2009. Dr. Mukkamala further concluded that she does not require any additional treatment except for palliative medical management, which includes the medical management of her headaches.

For her headaches resulting from the compensable injury, Dr. Mukkamala recommended 3% whole person impairment. By Order dated September 12, 2011, the claims administrator granted Ms. Myles a 3% permanent partial disability award based upon Dr. Mukkamala's report.

Although Ms. Myles protested the claims administrator's decision, the Office of Judges affirmed the 3% award on September 27, 2012, and found that she was not entitled to a greater permanent partial disability award. Ms. Myles underwent an independent medical evaluation by Karl C. Boone, D.C., on March 31, 2016. Dr. Boone diagnosed post-traumatic headaches and chronic migraines without aura.

He noted that Ms. Myles previously received a 3% permanent partial disability award for her persistent headaches. Dr. Boone did not believe that her cervical spine complaints were seriously addressed in the record. He noted that a cervical spine MRI showed some degree of cervical disc involvement. Dr. Boone stated that there was sufficient force to injure Ms. Myles's cervical spine either from blunt trauma to the head or the subsequent fall to the floor.

He recommended physical therapy with hopes of improving her headache patterns and to wean her off of some of her medications. On April 8, 2016, Ms. Myles requested to reopen her claim for permanent partial disability benefits. Ms. Myles was once again referred to Dr. Mukkamala for an independent medical evaluation, which was conducted on May 18, 2016. Dr. Mukkamala noted that he had previously examined Ms. Myles and concluded that she had reached her maximum degree of medical improvement with 3% whole person impairment for her compensable injury and post-traumatic headaches.

Dr. Mukkamala opined that she did not have any additional impairment that was causally related to the compensable injury. He noted that her headaches are multifactorial with relation to causation. Initially, the headaches were at least partially related to the compensable injury.

However, Dr. Mukkamala opined that the current symptoms and headaches are mostly causally related to noncompensable issues such as cervical spondylosis. Dr. Mukkamala stated that it is

possible that cervical spondylosis contributes to headaches; however, he noted that her cervical spondylosis is naturally occurring and not causally related to the compensable injury.

The claims administrator issued an Order on July 19, 2016, granting no additional permanent partial disability award based upon the independent medical evaluation by Dr. Mukkamala. Ms. Myles protested the claims administrator's decision and argued that her claim should have been reopened.

For purposes of obtaining a reopening of a workers' compensation claim under the provisions of West Virginia Code § 23-5-1a and § 23-5-1b, a claimant must show a prima facie cause, which means nothing more than any evidence which would tend to justify, but not compel, the inference that there has been a progression or aggravation of the former injury. *Harper v. State Workmen's Compensation Comm'r*, 160 W. Va. 364, 364, 234 S.E.2d 779, 783 (1977).

Where an injured employee makes application in writing for further adjustment to the claim, and the application discloses facts not theretofore considered by the commissioner, and which if true, would entitle the claimant to further benefits, the claimant is entitled to have the claim reopened, and to have a determination of the matters alleged in the application.

Bostic v. State Compensation Comm'r, 142 W. Va. 484, 96 S.E.2d 481 (1957). The Office of Judges found that the March 31, 2016, report from Dr. Boone establishes a fact not previously considered in the claim. Dr. Boone was of the opinion that, at the time of the injury, there was sufficient force to injure the cervical spine, which could be a cause of Ms. Myles's headaches.

The Office of Judges reversed the claims administrator's July 19, 2016, denial of the request to reopen the claim on a permanent partial disability basis. West Virginia United Health System protested the decision. The Board of Review reversed and vacated the Order of the Office of Judges dated May 11, 2018.

The Board of Review found the Office of Judges's analysis and conclusions to be clearly wrong in light of the reliable, probative and substantial evidence on the whole record. The Board of Review disagreed with the reasoning that the cervical spine issues are new facts that were not previously considered because Dr. Mukkamala noted, in his report dated August 11, 2011, that he found normal cervical range of motion, and no paracervical muscle spasm or tenderness.

The Board of Review also stated that Ms. Myles had been diagnosed with cervical spine tension headaches, degenerative disc disease of the cervical spine, and cervicgia, prior to the injury in the claim. Given the evidence of record, the Board of Review concluded that Ms. Myles has not met the test for reopening found in *Bostic* or *Harper*.

After review, we agree with the decision of the Board of Review. Although Dr. Boone opined that there was sufficient force at the time of the injury to injure Ms. Myles's cervical spine and that her

headaches could be the result of her cervical spine, the Board of Review did not conclude that Ms. Myles met the test for reopening of her claim because cervical spine issues are not new facts previously unconsidered.

The Board of Review reasoned that Dr. Mukkamala determined that Ms. Myles was fully compensated by her prior 3% permanent partial disability award for headaches and her cervical spondylosis that Dr. Boone indicated might be contributing to her was headaches was naturally occurring and not causally related to her compensable injury.

The Board of Review did not err in reversing the May 11, 2018, decision of the Office of Judges because there is no evidence of record supporting additional impairment above the 3% permanent partial disability award already granted in the claim.

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 so clearly wrong based upon the evidentiary record that even when all inferences are resolved in favor of the Board of Review's findings, reasoning and conclusions, there is insufficient support to sustain the decision.

Therefore, the decision of the Board of Review is affirmed. Affirmed. 3 ISSUED: November 1, 2019 CONCURRED IN BY: Chief Justice Elizabeth D. Walker Justice Tim Armstead Justice Evan H. Jenkins Justice John A. Hutchison DISSENTING: Justice Margaret L. Workman 4