

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PRECEDENTIAL VALUE	nonprecedential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

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PRACTICE AREAS

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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)

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