

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Century Aluminum of West Virginia, Inc. v. Harvey Ealy

Century Aluminum · No. No. 12-0246 · Decided November 18, 2013

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the Workers' Compensation Board of Review's decision concerning Harvey Ealy's occupational pneumoconiosis claim. The court held that the Board did not commit clear legal or factual error in allowing the claim to proceed and remanding it for consideration of the statutory presumption and referral to the Occupational Pneumoconiosis Board.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; Justice Robin J. Davis; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Allen H. Loughry II; Chief Justice Brent D. Benjamin
JURISDICTION	West Virginia
DECIDED	November 18, 2013
DOCKET	No. 12-0246
DISPOSITION	affirmed
PROCEDURAL POSTURE	Century Aluminum appealed the West Virginia Workers' Compensation Board of Review's final order reversing the Office of Judges and holding Harvey Ealy's occupational pneumoconiosis claim compensable on a non-medical basis.
STANDARD OF REVIEW	The Board of Review's decision would be affirmed unless it clearly violated a constitutional or statutory provision, was clearly the result of erroneous conclusions of law, or was based on a material misstatement or mischaracterization of the evidentiary record.
PRECEDENTIAL VALUE	Memorandum decision; no reporter citation appears in the source.
PARTIES	Century Aluminum of West Virginia, Inc. v. Harvey Ealy

TOPICS

workers compensation

administrative law

judicial review of agency action

appellate procedure

standard of review

PRACTICE AREAS

workers compensation

administrative law

appellate procedure

employment law

QUESTIONS PRESENTED

1. Whether the Board of Review erred by determining that Ealy could pursue a new occupational pneumoconiosis claim despite having no additional occupational exposure since the prior claim's last date of exposure.
2. Whether the Board of Review erred by holding the claim compensable on a non-medical basis and remanding for a determination regarding the statutory presumption and referral to the Occupational Pneumoconiosis Board.
3. Whether the Board of Review improperly weighed the competing medical readings or exceeded its jurisdiction by determining that Ealy had pneumoconiosis.

HOLDINGS

1. Because occupational pneumoconiosis is progressive and Ealy had a new diagnosis based on a later reading of chest x-rays, the absence of additional occupational exposure was not, by itself, a sufficient basis to reject his new claim.
2. The Board of Review properly held the claim compensable on a non-medical basis and remanded it to the claims administrator to issue a protestable order addressing whether Ealy was entitled to the presumption under West Virginia Code § 23-4-8c(b) and to refer the claim to the Occupational Pneumoconiosis Board.

KEY QUOTATIONS

"We agree with the reasoning and conclusions of the Board of Review." (2)

"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." (2)

FACTUAL BACKGROUND

Harvey Ealy worked as a plant worker for Century Aluminum and alleged exposure to occupational pneumoconiosis hazards. The Occupational Pneumoconiosis Board had previously been unable to diagnose occupational pneumoconiosis, and Ealy had no additional occupational exposure after the prior claim's last date of exposure. In 2010, Dr. Ahmed read chest x-rays as showing simple pneumoconiosis and pleural thickening, while Dr. Wheeler read the same x-rays as showing no pneumoconiosis or benign asbestos-related pleural plaques. The Board of Review determined that the new medical reading permitted Ealy to pursue a new claim despite the absence of additional exposure.

PROCEDURAL HISTORY

The claims administrator denied Ealy's application for workers' compensation benefits. The Office of Judges affirmed that denial, concluding that Ealy was not entitled to an Occupational Pneumoconiosis Board evaluation because he had no additional occupational exposure after the prior claim's last date of exposure. The Board of Review reversed, held the claim compensable on a non-medical basis, and remanded to the claims administrator for a protestable determination concerning the statutory presumption and referral to the Occupational Pneumoconiosis Board. The Supreme Court of Appeals affirmed the Board of Review.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The Board of Review's remand to the claims administrator remained in effect. The claims administrator was to issue a protestable order determining whether Ealy was entitled to the presumption under West Virginia Code § 23-4-8c(b) and refer the claim to the Occupational Pneumoconiosis Board.

OPINION

Century Aluminum of W. Va. v. Harvey Ealy

PER CURIAM.

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

CENTURY ALUMINUM OF WEST VIRGINIA, INC., November 18, 2013

RORY L. PERRY II, CLERK

Employer Below, Petitioner SUPREME COURT OF APPEALS

OF WEST VIRGINIA

vs.) No. 12-0246 (BOR Appeal No. 2046392) (Claim No. 2010137544)

HARVEY EALY,

Claimant Below, Respondent

MEMORANDUM DECISION

Petitioner Century Aluminum of West Virginia, Inc., by T. Jonathan Cook, its attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. This appeal arises from the Board of Review's Final Order dated January 24, 2012, in which the Board reversed an August 25, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's June 14, 2010 decision denying Mr. Ealy's application for workers' compensation benefits. 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. Ealy allegedly suffered exposure to the hazards of occupational pneumoconiosis while working as a plant worker for Century Aluminum of West Virginia, Inc. The claims administrator denied Mr. Ealy's application for workers' compensation benefits. On July 17, 1997, the Occupational Pneumoconiosis Board concluded that it could not make a diagnosis of occupational pneumoconiosis. On March 30, 2010, Dr. Ahmed concluded that the chest x-rays dated March 18, 2010, revealed simple pneumoconiosis. On May 31, 2011, Dr. Wheeler concluded that there was no pneumoconiosis or benign asbestos related pleural plaques revealed on Mr. Ealy's chest x-rays.

1 The Office of Judges affirmed the claims administrator's decision, and held that Mr. Ealy was not entitled to an evaluation by the Occupational Pneumoconiosis Board because he has not suffered any additional occupational exposure since the prior claim's date of last exposure. The Board of Review reversed the Office of Judges's Order, and held the claim compensable on a non-medical basis. It further ordered the claim be remanded to the claims administrator with instructions to issue a protestable order determining whether or not Mr. Ealy is entitled to the benefit of the presumption as set forth in West Virginia Code § 23-4-8c(b) (2009) and refer the claim to the Occupational Pneumoconiosis Board. On appeal, Century Aluminum of West Virginia, Inc. disagrees and asserts that the Board of Review erred in finding that Dr. Ahmed's reading of the x-rays established that Mr. Ealy had occupational pneumoconiosis, and that it did not properly weigh Dr. Wheeler's reading of the x-rays under West Virginia Code § 23-4-1g (2003). It further argues that Mr. Ealy needed additional exposure to proceed with a new occupational pneumoconiosis claim, and that the Board of Review exceeded its jurisdiction by making a finding of fact that Mr. Ealy had pneumoconiosis. The Board of Review concluded that because occupational pneumoconiosis is a progressive disorder the fact that Mr. Ealy did not have any additional exposure since the prior claim is not a sufficient basis on its own to reject a claim for occupational pneumoconiosis. This claim was previously denied by the Occupational Pneumoconiosis Board. However, since that ruling Dr. Ahmed concluded that Mr. Ealy had impressions of simple pneumoconiosis, right pleural thickening, left pleural thickening, and atherosclerotic aorta based on his reading of the x-rays dated March 18, 2010. The Board of Review noted that Dr. Wheeler read the same x-rays and did not find the presence of pneumoconiosis. However, it concluded that since Mr. Ealy received a new diagnosis of pneumoconiosis based upon the March 18, 2010, x-rays as read by Dr. Ahmed, Mr. Ealy is entitled to pursue a new claim. Ultimately, the Board of Review held the claim compensable on a non-medical basis and be remanded to the claims administrator with instructions to issue a protestable order determining whether or not Mr. Ealy is entitled to the benefit of the presumption as set forth in West Virginia Code § 23-4-8c(b) (2009), and to refer the claim to the Occupational Pneumoconiosis Board. 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. 2 ISSUED: November 18, 2013 CONCURRED IN BY: Justice Robin J. Davis Justice Margaret L. Workman Justice Menis E. Ketchum Justice Allen H. Loughry II DISSENTING: Chief Justice Brent D. Benjamin 3

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