

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Cordelia Johnson v. Starlight Behavioral Health Services, Inc.

No. 13-0802 (BOR Appeal No. 2048053) (Claim No. 2011006040) (W. Va. Sept. 18, 2014) · No. No. 13-0802 ·
Decided September 18, 2014

SUMMARY

The West Virginia Supreme Court of Appeals affirmed a Workers' Compensation Board of Review decision granting Cordelia Johnson a 0% permanent partial disability award. The court held that the compensable injuries were limited to a chest wall contusion and unspecified contusion, that the right shoulder condition had not been established as compensable, and that the medical evidence showed no permanent impairment from the compensable injuries.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Robin J. Davis; Justice Brent D. Benjamin; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	September 18, 2014
DOCKET	No. 13-0802
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner's appeal from the West Virginia Workers' Compensation Board of Review's order affirming an Office of Judges order that affirmed the claims administrator's denial of a permanent partial disability award.
STANDARD OF REVIEW	The Board of Review's decision will not be disturbed unless it is in clear violation of a constitutional or statutory provision, clearly results from erroneous conclusions of law, or is based on a material misstatement or mischaracterization of the evidentiary record.
PRECEDENTIAL VALUE	memorandum decision; nonprecedential
PARTIES	Cordelia Johnson v. Starlight Behavioral Health Services, Inc.

TOPICS

workers compensation

appellate procedure

standard of review

administrative law

judicial review of agency action

PRACTICE AREAS

workers compensation

administrative law

appellate procedure

QUESTIONS PRESENTED

1. Whether the Board of Review erred in affirming a 0% permanent partial disability award when the independent medical evaluator found right-shoulder impairment.
2. Whether the right shoulder could be considered in calculating permanent partial disability when its compensability had previously been denied and the denial was not appealed.

HOLDINGS

1. The right-shoulder condition could not support an award because its compensability had been denied in prior unappealed decisions, and the only compensable conditions were the chest wall contusion and unspecified contusion.
2. The Board of Review's decision affirming a 0% permanent partial disability award was affirmed because the record showed 0% impairment resulting from Johnson's compensable injuries and the decision did not violate law or rely on a material misstatement of the evidence.

KEY QUOTATIONS

“The evidentiary record demonstrates that Ms. Johnson sustained 0% whole person impairment as a result of her compensable injuries.” (2)

“Therefore, the decision of the Board of Review is affirmed.” (2)

FACTUAL BACKGROUND

Johnson was injured at work on August 14, 2010, after slipping and falling, and was diagnosed with a chest wall contusion. The claim was held compensable for a chest wall contusion and unspecified contusion, but the claims administrator denied adding her later-diagnosed right rotator cuff syndrome and denied related treatment. An independent medical evaluator assigned 12% whole person impairment for right-shoulder range-of-motion abnormalities but 0% impairment attributable to the compensable chest wall injuries.

PROCEDURAL HISTORY

The claims administrator held compensable a chest wall contusion and unspecified contusion but denied adding right rotator cuff syndrome as a compensable condition. It later granted Johnson a 0% permanent partial disability award. The Workers’ Compensation Office of Judges affirmed, the Board of Review affirmed that decision, and the Supreme Court of Appeals affirmed the Board's order.

DISPOSITION

affirmed

OPINION

PER CURIAM.

STATE OF WEST VIRGINIA FILED SUPREME COURT OF APPEALS September 18, 2014
RORY L. PERRY II, CLERK SUPREME COURT OF APPEALS CORDELIA JOHNSON, OF
WEST VIRGINIA Claimant Below, Petitioner vs.) No. 13-0802 (BOR Appeal No. 2048053)
(Claim No. 2011006040) STARLIGHT BEHAVIORAL HEALTH SERVICES, INC., Employer
Below, Respondent MEMORANDUM DECISION Petitioner Cordelia Johnson, by Timothy Eves
and Omar Ahmad, her attorneys, appeals the decision of the West Virginia Workers' Compensation
Board of Review.

Starlight Behavioral Health Services, Inc., by Matthew Williams, its attorney, filed a timely response. This appeal arises from the Board of Review's Final Order dated July 5, 2013, in which the Board affirmed a December 17, 2012, Order of the Workers' Compensation Office of Judges.

In its Order, the Office of Judges affirmed the claims administrator's October 17, 2011, decision granting Ms. Johnson no award for permanent partial disability. 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. Johnson was injured on August 14, 2010. Immediately following the injury, she presented at Cabell Huntington Hospital's emergency department complaining of right chest pain after slipping and falling, and was diagnosed with a chest wall contusion.

On August 23, 2010, an Employee's and Physician's Report of Injury was completed listing the chest wall as the body part injured, and listing the injury as a chest wall contusion. The claims administrator held the claim compensable for a chest wall contusion and unspecified contusion on September 2, 2010. 1 On September 7, 2010, Ms. Johnson began complaining of right shoulder pain and was later diagnosed with a rotator cuff tear.

On February 3, 2011, the claims administrator denied Ms. Johnson's request to add right rotator cuff syndrome as a compensable component of the claim. Subsequently, the claims administrator denied authorization for numerous requests for medical treatment relating to the right shoulder.

On September 15, 2011, Robert Walker, M.D., performed an independent medical evaluation and opined that Ms. Johnson has 12% whole person impairment for range of motion abnormalities in the right shoulder and 0% whole person impairment for the chest wall contusion.

On September 27, 2011, the claims administrator issued a letter to Dr. Walker stating that the right shoulder is not a compensable component of the instant claim and requesting that he issue an addendum to his report with information regarding only the amount of whole person impairment arising from Ms. Johnson's compensable injury. Dr. Walker issued an addendum report on October 7, 2011, and opined that Ms. Johnson sustained 0% whole person impairment as a result of her compensable chest wall injuries.

On October 17, 2011, the claims administrator granted Ms. Johnson a 0% permanent partial disability award. In its Order affirming the October 17, 2011, claims administrator's decision, the Office of Judges held that prior rulings of the claims administrator have established that the right shoulder is not a compensable component of the instant claim, and further held that Ms. Johnson has no permanent impairment as a result of her compensable chest wall contusion.

The Board of Review affirmed the reasoning and conclusions of the Office of Judges in its decision of July 5, 2013. The Office of Judges found that the issue of compensability has been fully litigated in the instant claim, and the only conditions which have been held compensable are contusion of the chest wall and unspecified contusion.

As noted by the Office of Judges, compensability of the right shoulder was specifically denied and Ms. Johnson did not appeal this decision. Moreover, treatment for the right shoulder has been consistently denied by the claims administrator and Ms. Johnson did not appeal those decisions.

Although Dr. Walker opined that Ms. Johnson has 12% whole person impairment for range of motion abnormalities in the right shoulder, the issue of compensability of the right shoulder has been fully litigated and compensability has been denied. Dr. Walker, whose independent medical evaluation is the only one of record, has opined that Ms. Johnson sustained 0% whole person impairment as a result of her compensable injuries.

We agree with the reasoning and conclusions of the Office of Judges, which were affirmed by the Board of Review. The evidentiary record demonstrates that Ms. Johnson sustained 0% whole person impairment as a result of her compensable injuries.

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. 2 Affirmed. ISSUED: September 18, 2014 CONCURRED IN BY: Chief Justice Robin J. Davis Justice Brent D. Benjamin Justice Margaret L. Workman Justice Menis E. Ketchum Justice Allen H. Loughry II 3

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