

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Robert E. Strickland v. Geo V. Hamilton, Inc.

Strickland · No. No. 13-0083 (BOR Appeal Nos. 2047239 & 2047360) (Claim No. 2011017160) · Decided June 10, 2014

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed decisions denying Robert E. Strickland additional temporary total disability benefits for the period after he was released to modified work and before his claim was reopened for surgery-related benefits. The court held that the evidence supported reliance on the physician's initial work release and that the claim was properly reopened for additional benefits related to the pending surgery.

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 Allen H. Loughry II; Justice Menis E. Ketchum
JURISDICTION	West Virginia
DECIDED	June 10, 2014
DOCKET	No. 13-0083 (BOR Appeal Nos. 2047239 & 2047360) (Claim No. 2011017160)
DISPOSITION	affirmed
PROCEDURAL POSTURE	Strickland appealed two final decisions of the West Virginia Workers' Compensation Board of Review affirming Office of Judges orders concerning temporary total disability benefits.
STANDARD OF REVIEW	The Board of Review's decision would be reversed only if it clearly violated a constitutional or statutory provision, clearly resulted from erroneous conclusions of law, or was based on a material misstatement or mischaracterization of the evidentiary record.
PRECEDENTIAL VALUE	Memorandum decision; the opinion does not state a separate precedential designation.
PARTIES	Robert E. Strickland v. Geo V. Hamilton, Inc.

TOPICS

workers compensation

appellate procedure

standard of review

administrative law

PRACTICE AREAS

workers compensation

employment law

administrative law

QUESTIONS PRESENTED

1. Whether Strickland was entitled to temporary total disability benefits from January 4, 2011, through December 13, 2011, despite his physician's release to modified work.
2. Whether the claim was properly reopened on December 13, 2011, for additional temporary total disability benefits related to pending shoulder surgery.
3. Whether the Board of Review's decisions were clearly erroneous under the applicable standard of review.

HOLDINGS

1. Strickland was not entitled to additional temporary total disability benefits for the period after Dr. Mancini released him to modified work and before the claim was reopened for surgery-related benefits.
2. The claim was properly reopened on December 13, 2011, for additional temporary total disability benefits related to Strickland's pending surgery.
3. The Board of Review's decisions were not in clear violation of any constitutional or statutory provision, did not rest on clearly erroneous conclusions of law, and were not based on a material misstatement or mischaracterization of the evidentiary record.

KEY QUOTATIONS

"The evidence in the record shows that Mr. Strickland's temporary total disability benefits were properly terminated once he was released to return to modified work by Dr. Mancini." (at 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." (at 3)

FACTUAL BACKGROUND

Robert E. Strickland sustained a compensable partial-thickness rotator cuff tear on October 10, 2010, when he tripped and reached out his right arm to stop his fall. His treating physician, Dr. Anthony Mancini, initially released him to return to modified work effective January 4, 2011, with a fifty-pound lifting restriction. After continued limited shoulder motion, Dr. Mancini requested surgery and later issued a conflicting statement that Strickland was disabled from the date of injury through March 20, 2012.

PROCEDURAL HISTORY

The claims administrator initially granted temporary total disability benefits after Strickland's compensable shoulder injury, later terminated benefits after his physician released him to modified work, and subsequently

reopened the claim for benefits related to pending surgery. The Office of Judges affirmed the termination of benefits for the period from January 4, 2011, through December 13, 2011, and affirmed reopening for surgery-related benefits. The Board of Review affirmed both orders, and Strickland appealed to the Supreme Court of Appeals of West Virginia, which consolidated the appeals and affirmed.

DISPOSITION

affirmed

OPINION

PER CURIAM.

STATE OF WEST VIRGINIA FILED SUPREME COURT OF APPEALS June 10, 2014 RORY L. PERRY II, CLERK SUPREME COURT OF APPEALS ROBERT E. STRICKLAND, OF WEST VIRGINIA Claimant Below, Petitioner vs.) No. 13-0083 (BOR Appeal Nos. 2047239 & 2047360) (Claim No. 2011017160) GEO V. HAMILTON, INC., Employer Below, Respondent MEMORANDUM DECISION Petitioner Robert E. Strickland, by Christopher J. Wallace and Raymond A. Hinerman, his attorneys, appeals two decisions of the West Virginia Workers' Compensation Board of Review.¹ Geo V. Hamilton, Inc., by Lucinda Fluharty, its attorney, filed a timely response.

This appeal arises from two Final Orders of the Board of Review dated December 20, 2012, in which the Board affirmed June 19, 2012, and May 17, 2012, Orders of the Workers' Compensation Office of Judges. In its June 19, 2012, Order, the Office of Judges affirmed the claims administrator's December 13, 2011, decision reopening the claim for temporary total disability benefits due to surgery.

In its May 17, 2012, Order, the Office of Judges affirmed the claims administrator's November 14, 2011, decision only insofar as it denied Mr. Strickland temporary total disability benefits from January 4, 2011, to December 13, 2011.

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. ¹ On January 24, 2013, Mr. Strickland requested that this Court consolidate Board of Review Appeal Nos. 2047239 and 2047360. Upon consideration, this Court granted Mr.

Strickland's motion. 1 Mr. Strickland worked for Geo V. Hamilton, Inc. On October 10, 2010, Mr. Strickland injured his right shoulder when he tripped and reached out his right arm to stop his fall, causing a partial thickness rotator cuff tear.

The claims administrator held the claim compensable and granted him temporary total disability benefits starting on the day following the injury. Mr. Strickland came under the care of Anthony Mancini, M.D. After a course of treatment, Dr. Mancini released him to return to work as of January 4, 2011, but restricted him from lifting over fifty pounds. Nine months later, Dr. Mancini found that Mr. Strickland still had limited range of motion in his shoulder and requested authorization for surgery.

Dr. Mancini further indicated that Mr. Strickland would require additional disability benefits during his recovery. On November 14, 2011, the claims administrator closed the claim for temporary total disability benefits. Mr. Strickland then requested additional temporary total disability benefits related to his pending surgery, and the claims administrator reopened his claim on December 13, 2011.

Dr. Mancini then issued a second statement in which he found that Mr. Strickland was disabled from October 10, 2010, until March 20, 2012. On May 17, 2012, the Office of Judges affirmed the claims administrator's November 14, 2011, decision only in so far as it denied Mr. Strickland temporary total disability benefits from the date he was released to return to work up to the date the claim was reopened for additional temporary total disability benefits due to his pending surgery.

On June 19, 2012, the Office of Judges also affirmed the claims administrator's December 13, 2011, decision. The Board of Review affirmed both Orders of the Office of Judges in two separate decisions dated December 20, 2012, leading Mr. Strickland to appeal.

In its May 17, 2012, Order, the Office of Judges concluded that Mr. Strickland did not demonstrate that he was entitled to temporary total disability benefits during the period in which he was released to return to modified work and prior to the claim being reopened for temporary total disability benefits related to his pending surgery.

The Office of Judges based this determination on Dr. Mancini's finding that Mr. Strickland could return to work with some restrictions. The Office of Judges also considered Dr. Mancini's second statement, indicating that Mr. Strickland was disabled from the date of his injury until March 20, 2012.

However, it determined that Dr. Mancini's first statement, which released him to return to work, was more persuasive. In its first December 20, 2012, decision, the Board of Review adopted the findings of the Office of Judges and affirmed its Order.

In its June 19, 2012, Order, the Office of Judges concluded that the claim was properly reopened on December 13, 2011, for additional temporary total disability benefits related to Mr. Strickland's pending surgery. The Office of Judges determined that Mr. Strickland was not entitled to additional temporary total disability benefits prior to this reopening.

The Office of Judges found that Dr. Mancini's second statement, indicating that Mr. Strickland was entitled to additional benefits prior to the surgery, was inconsistent with his statement releasing Mr. Strickland to return to work.

The Office of Judges found that Dr. Mancini did not adequately explain his subsequent statement. In its second December 20, 2012, decision, the Board of Review adopted the finding of the Office of Judges and affirmed its Order.

On appeal, Mr. Strickland requests additional temporary total disability benefits based on Dr. Mancini's second statement. 2 We agree with the conclusion of both decisions of the Board of Review and the findings of both Orders of the Office of Judges. Mr. Strickland has not demonstrated that he is entitled to any additional temporary total disability benefits.

The evidence in the record shows that Mr. Strickland's temporary total disability benefits were properly terminated once he was released to return to modified work by Dr. Mancini. This termination is consistent with the reasons for terminating temporary total disability benefits under West Virginia Code § 23-4-7a(e) (2005).

The Office of Judges was within its discretion in relying on Dr. Mancini's initial release of Mr. Strickland to modified work. The claim was also properly reopened for additional temporary total disability benefits related to the pending surgery.

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. ISSUED: June 10, 2014
CONCURRED IN BY: Chief Justice Robin J. Davis Justice Brent D. Benjamin Justice Margaret L. Workman Justice Allen H. Loughry II DISSENTING: Justice Menis E. Ketchum 3