

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Robin Stackpole v. Sun Healthcare

Stackpole · No. No. 15-0284 (BOR Appeal No. 2049746) (Claim No. 2012012542) · Decided April 14, 2016

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the denial of Robin Stackpole's claim for a permanent partial disability award arising from a workplace back injury. The court concluded that Stackpole failed to establish a connection between her alleged impairment and the compensable injury, particularly in light of her prior history of back problems and conflicting independent medical evaluations. The court issued the decision 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; Justice Robin J. Davis; Justice Brent D. Benjamin; Justice Allen H. Loughry II; Chief Justice Menis E. Ketchum; Justice Margaret L. Workman
JURISDICTION	West Virginia
DECIDED	April 14, 2016
DOCKET	No. 15-0284 (BOR Appeal No. 2049746) (Claim No. 2012012542)
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner's appeal from the West Virginia Workers' Compensation Board of Review's order affirming a 0% permanent partial disability award.
STANDARD OF REVIEW	The Court considered whether the Board of Review's decision violated a constitutional or statutory provision, resulted from erroneous conclusions of law, or was based on a material misstatement or mischaracterization of the evidentiary record.
PRECEDENTIAL VALUE	limited
PARTIES	Robin Stackpole v. Sun Healthcare

TOPICS

- workers compensation
- standard of review
- appellate procedure
- administrative law

PRACTICE AREAS

workers compensation

administrative law

appellate procedure

QUESTIONS PRESENTED

1. Whether Stackpole established that a permanent impairment was causally connected to her compensable workers' compensation injury.
2. Whether the Workers' Compensation Board of Review clearly erred in affirming the 0% permanent partial disability award.

HOLDINGS

1. A workers' compensation claimant seeking a permanent partial disability award must establish a connection between the claimed impairment and the compensable injury. Stackpole failed to establish that connection, so the denial of a permanent partial disability award was proper.
2. The Board of Review's decision was not in clear violation of a constitutional or statutory provision, was not clearly based on erroneous conclusions of law, and was not based on a material misstatement or mischaracterization of the evidentiary record.

KEY QUOTATIONS

“Because Ms. Stackpole did not establish the connection between the impairment and the compensable injury, it was not in error for the Office of Judges and Board of Review to decline to grant a permanent partial disability award.” (3)

“Therefore, the decision of the Board of Review is affirmed.” (3)

FACTUAL BACKGROUND

Robin Stackpole, a certified nursing assistant for Sun Healthcare, injured her back while lifting a patient on October 7, 2011. Medical evaluators disagreed about whether she had a ratable impairment and whether any impairment was attributable to the work-related injury, particularly in light of her history of back pain, degenerative disc disease, fibromyalgia, and other spine complaints. The claims administrator awarded 0% permanent partial disability, relying on an evaluation that found no ratable impairment.

PROCEDURAL HISTORY

The claims administrator granted Stackpole a 0% permanent partial disability award based on an independent medical evaluation. The Workers' Compensation Office of Judges affirmed that decision, and the Board of Review affirmed the Office of Judges. The Supreme Court of Appeals reviewed the Board's final order and affirmed.

DISPOSITION

affirmed

OPINION

Robin Stackpole v. Sun Healthcare

PER CURIAM.

STATE OF WEST VIRGINIA

FILED

SUPREME COURT OF APPEALS April 14, 2016

RORY L. PERRY II, CLERK

SUPREME COURT OF APPEALS

ROBIN STACKPOLE, OF WEST VIRGINIA

Claimant Below, Petitioner vs.) No. 15-0284 (BOR Appeal No. 2049746) (Claim No. 2012012542)

SUN HEALTHCARE,

Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Robin Stackpole, by J. Thomas Greene Jr., her 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 February 25, 2015, in which the Board affirmed an August 25, 2014, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's January 16, 2013, decision which granted a 0% permanent partial disability award. 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. Stackpole, a certified nursing assistant for Sun Healthcare, was working on October 7, 2011, when she injured her back attempting to lift a patient. Ms. Stackpole experienced back pain that extended down the right leg as far as the knee. She reported the injury to her supervisor and finished out her shift. She attempted to work the following day but could not perform her job duties because she was in too much pain. She was reevaluated at the Prompt Care facility at St. Joseph Hospital where she was diagnosed with an acute myofascial lumbar sprain. 1 Ms. Stackpole reported to Joseph Snead, M.D., who issued an independent medical evaluation on May 1, 2012. Dr. Snead found evidence of some type of disc degeneration or a bulging process in the lumbar area. However, without the benefit of an MRI, he opined it would be difficult to determine at what level the problem was located. Because the pain was in the upper thigh, he opined the problem is most likely at one of the higher lumbar levels between L2 and L4. Dr. Snead concluded that Ms. Stackpole most likely suffered from an upper lumbar disc bulge. Using range of motion, he measured 14% whole person impairment. He also found 5% impairment from

Section II-B of Table 75 of the American Medical Association's Guides to the Evaluation of Permanent Impairment (4th ed. 1993). He then combined the 14% with the 5% from Table 75 to reach 18% whole person impairment. Dr. Snead placed Ms. Stackpole in Category II of Table 15-3 of the American Medical Association's Guides to the Evaluation of Permanent Impairment (5th ed. 2001), which allowed an impairment rating from 5% to 8%. He then utilized West Virginia Code of State Rules § 85-20-C (2006) and recommended 8% whole person impairment for the injury. However, he did not think Ms. Stackpole was at maximum medical improvement and noted that she was scheduled for lumbar injections. Dr. Snead opined that if these were carried out in a timely manner, he would expect her to reach maximum medical improvement around July of 2012. In a December 12, 2012, independent medical evaluation, Kelly Agnew, M.D., found no evidence of atrophy of the right lower extremity to correlate with longstanding weakness. He felt the work-related injury of October 7, 2011, was now maximally improved with no evidence of lingering impairment. He stated that Ms. Stackpole had some prior spine complaints, including the lumbar area, prompting chiropractic care. He agreed with the radiologist that Ms. Stackpole does not have a disc herniation, an annular tear, or any nerve root compression. He stated that she had a very mild desiccation with a tiny bulge at L5-S1, which is completely normal and does not represent an injury. He noted that Ms. Stackpole has no objective muscular tenderness or spasm. She demonstrated excellent flexibility, although she had to be distracted to exhibit it. Dr. Agnew also noted a very strong component of non-organicity to her presentation. He found no ratable impairment. On January 16, 2013, the claims administrator granted a 0% permanent partial disability award based upon Dr. Agnew's report. On January 31, 2014, an independent medical evaluation from Karl C. Boone, D.C., was issued. He diagnosed lumbar intervertebral disc displacement without myelopathy, lumbar radiculitis, lumbosacral strain, and lumbar spondylosis. He opined that Ms. Stackpole had reached maximum medical improvement with regard to the injury. He placed her in Category II B of Table 75 of the 4th edition of the AMA's Guides for 5% whole person impairment. He indicated her range of motion findings were invalid and therefore suggested no impairment for such. He noted that there were no gross neurological deficits in her lower extremities and placed her in Category II of West Virginia Code of State Rules § 85-20-C. His total assessment was 5% whole person impairment. The Office of Judges affirmed the claims administrator's decision in its August 25, 2014, Order. It found Ms. Stackpole failed to show she was permanently and partially disabled as a result of her compensable injury. The Office of Judges stated that it was not clear from the record what the claim was held compensable for because the evidence presented consisted of three 2 independent medical evaluations. The Office of Judges gleaned from the various reports that since the early 2000's, Ms. Stackpole has had back pain, degenerative disc disease, fibromyalgia, and idiopathic peripheral neuropathy. The Office of Judges also noted that under the standard of proof it was Ms. Stackpole's burden to establish her claim. The Office of Judges concluded it was unclear from the reports what the compensable injuries were and if Ms. Stackpole's impairment was attributable to them. As a result, the Office of

Judges did not adopt any independent medical evaluation as persuasive and affirmed the claims administrator's award of 0% permanent partial disability. The Board of Review adopted the findings of the Office of Judges and affirmed its Order on February 25, 2015. After review, we agree with the consistent conclusions of the Office of Judges and Board of Review. Three independent medical evaluations have been submitted. From the two evaluations that found impairment, the connection between the impairment and the compensable injury was not apparent. It could not be gleaned from the record presented what the compensable injuries were or how they resulted in impairment. Ms. Stackpole has an extensive history of back issues, pain, and sensitivity that does not correspond with her organic findings. Because Ms. Stackpole did not establish the connection between the impairment and the compensable injury, it was not in error for the Office of Judges and Board of Review to decline to grant a permanent partial disability award. 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: April 14, 2016 CONCURRED IN BY: Justice Robin J. Davis Justice Brent D. Benjamin Justice Allen H. Loughry II DISSENTING: Chief Justice Menis E. Ketchum Justice Margaret L. Workman 3