

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Cecil E. Scott v. Mercer County Board of Education

Scott · No. No. 17-0672 (BOR Appeal No. 2051767) (Claim No. 2013028581) · Decided May 7, 2018

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the Board of Review’s decision denying the addition of right cubital tunnel syndrome and right carpal tunnel syndrome to Cecil E. Scott’s workers’ compensation claim and denying authorization for an EMG. The court concluded that the conditions were not shown to be causally related to the compensable shoulder injury and that diagnostic testing for those conditions was properly denied. 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 Margaret L. Workman; Justice Robin J. Davis; Justice Menis E. Ketchum; Justice Allen H. Loughry II; Justice Elizabeth D. Walker
JURISDICTION	West Virginia
DECIDED	May 7, 2018
DOCKET	No. 17-0672 (BOR Appeal No. 2051767) (Claim No. 2013028581)
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petition for appellate review of a West Virginia Workers' Compensation Board of Review decision affirming the Office of Judges' denial of an EMG and denial of requests to add right cubital tunnel syndrome and right carpal tunnel syndrome to the claim.
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 the result of erroneous conclusions of law, or based on a material misstatement or mischaracterization of the evidentiary record.
PRECEDENTIAL VALUE	nonprecedential memorandum decision
PARTIES	Cecil E. Scott v. Mercer County Board of Education

TOPICS

workers compensation

judicial review of agency action

standard of review

appellate procedure

PRACTICE AREAS

workers compensation

administrative law

appellate procedure

QUESTIONS PRESENTED

1. Whether right cubital tunnel syndrome and right carpal tunnel syndrome should be added as compensable conditions to the workers' compensation claim.
2. Whether authorization should be granted for an EMG or nerve-conduction study of the right upper extremity.

HOLDINGS

1. The diagnoses of right cubital tunnel syndrome and right carpal tunnel syndrome were properly denied as compensable conditions because the evidentiary record did not establish that they were causally related to the compensable shoulder injury.
2. Authorization for the EMG was properly denied because the testing was requested to evaluate the non-compensable cubital tunnel and carpal tunnel conditions.
3. The Board of Review's decision did not clearly violate a constitutional or statutory provision, result from an erroneous conclusion of law, or rely on a material misstatement or mischaracterization of the evidentiary record.

KEY QUOTATIONS

“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 3-4)

FACTUAL BACKGROUND

Cecil E. Scott, a plumber, injured his right shoulder on April 22, 2013, while lifting pipe dies, and the workers' compensation claim was accepted for shoulder and rotator-cuff-related conditions. More than a year after the injury, he began reporting elbow and wrist symptoms and was diagnosed by one treating physician with right cubital tunnel syndrome and right carpal tunnel syndrome. Several reviewing and independent physicians found no causal relationship between those conditions and the compensable shoulder injury, and the requested EMG had not been performed to confirm the diagnoses.

PROCEDURAL HISTORY

The claims administrator denied authorization for an EMG of the right upper extremity and denied adding right cubital tunnel syndrome and right carpal tunnel syndrome to the workers' compensation claim. The Office of Judges affirmed those decisions on December 28, 2016. The Board of Review adopted the Office of Judges' findings and affirmed on June 23, 2017. The Supreme Court of Appeals of West Virginia affirmed the Board of Review.

DISPOSITION

affirmed

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