

SUPREME COURT OF APPEALS OF WEST VIRGINIA

URS Energy and Construction v. Jody McCartney

URS Energy · No. No. 17-0063 (BOR Appeal No. 2051369) (Claim No. 2015034124) · Decided October 10, 2017

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the Workers' Compensation Board of Review's decision remanding Jody McCartney's claim for further factual development. The court held that the claim was timely filed and found no clear legal or constitutional error in the Board's remand for consideration of additional evidence concerning whether McCartney's February 2, 2015, injuries were work-related.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per curiam; Chief Justice Allen H. Loughry II; Justice Robin J. Davis; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Elizabeth D. Walker
JURISDICTION	West Virginia
DECIDED	October 10, 2017
DOCKET	No. 17-0063 (BOR Appeal No. 2051369) (Claim No. 2015034124)
DISPOSITION	affirmed
PROCEDURAL POSTURE	Employer appealed the West Virginia Workers' Compensation Board of Review's order reversing the Office of Judges and remanding the claim for further development and a ruling on compensability.
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 upon a material misstatement or mischaracterization of the evidentiary record.
PRECEDENTIAL VALUE	Memorandum decision; no precedential designation stated in the opinion text.
PARTIES	URS Energy and Construction v. Jody McCartney

TOPICS

workers compensation

administrative law

judicial review of agency action

appellate procedure

standard of review

PRACTICE AREAS

Workers' compensation

Administrative law

Appellate procedure

QUESTIONS PRESENTED

1. Whether the Workers' Compensation Board of Review properly found McCartney's claim timely filed.
2. Whether the Board of Review properly remanded the claim to the Office of Judges for consideration of additional evidence and a ruling on the merits of compensability.
3. Whether the Board of Review's decision was in clear violation of a constitutional or statutory provision, resulted from erroneous conclusions of law, or rested on a material misstatement or mischaracterization of the evidentiary record.

HOLDINGS

1. The Board of Review did not err in remanding McCartney's claim to the Office of Judges to allow additional evidence and obtain a ruling on the merits of compensability.
2. The Board of Review's decision was not clearly erroneous or legally infirm under the applicable standard of review and therefore was affirmed.

KEY QUOTATIONS

"The Board of Review did not err in remanding the claim for a full and complete development of the facts in this case." (at 3)

"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

McCartney alleged that he slipped and fell on untreated ice while working for URS Energy and Construction on February 2, 2015. He sought medical treatment and was later diagnosed with right wrist and shoulder conditions, undergoing shoulder surgery on April 22, 2015. Although the claims administrator initially deferred its decision while seeking medical records, it ultimately denied the claim. McCartney later submitted evidence indicating that he had been treated in February 2015 for an injury occurring at work and that the provider had failed to document the visit as a workers' compensation claim.

PROCEDURAL HISTORY

The claims administrator denied McCartney's workers' compensation claim, finding no evidence that his injuries arose in the course of and resulted from employment. The Office of Judges affirmed, concluding both that the claim was untimely and that McCartney failed to establish a work-related injury. The Board of Review reversed

and remanded for consideration of additional evidence after finding the claim timely filed. The Supreme Court of Appeals affirmed the Board's decision.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The Office of Judges was to issue a new time-frame order permitting additional evidence, consider the September 15, 2016, report from Preston Healthcare Services, and issue a ruling on the merits of the compensability claim.

OPINION

URS Energy and Construction v. Jody McCartney

PER CURIAM.

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

October 10, 2017

URS ENERGY AND CONSTRUCTION, RORY L. PERRY II, CLERK

Employer Below, Petitioner SUPREME COURT OF APPEALS

OF WEST VIRGINIA

vs.) No. 17-0063 (BOR Appeal No. 2051369) (Claim No. 2015034124)

JODY MCCARTNEY,

Claimant Below, Respondent

MEMORANDUM DECISION

Petitioner URS Energy and Construction, by Jeffrey B. Brannon, its attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review.¹ The issue on appeal is whether the injuries suffered by Mr. McCartney on February 2, 2015, are compensable. On August 20, 2015, the claims administrator issued an Order rejecting the claim and determined that Mr. McCartney did not suffer a compensable work injury. On May 27, 2016, the Workers' Compensation Office of Judges affirmed the claims administrator's rejection of the claim on the basis that it was not timely filed and on the basis that the claimant did not establish that he sustained a work-related injury on February 2, 2015. This appeal arises from the Board of Review's Final Order dated December 26, 2016, in which the Board reversed and vacated the May 27, 2016, Order of the Office of Judges. The Board found that the claim was timely filed and remanded the case to the Office of Judges with instructions to consider additional evidence and issue a ruling on the merits of the compensability claim. 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 Mr. McCartney was represented by counsel during litigation, but not on appeal before this Court. 1 Mr. McCartney alleges that he suffered injuries while working for URS Energy and Construction, when he slipped and fell on untreated ice on February 2, 2015. At the time of his injury, he sought treatment at Preston Healthcare Services. Prior to his injury, Mr. McCartney underwent x-rays on his right wrist on February 1, 2015, which showed no acute bony abnormalities. Mr. McCartney was seen by Nick Zervos, M.D., on April 14, 2015. In his office note, Dr. Zervos referenced an injury to Mr. McCartney's right shoulder and wrist when he fell on black ice in February. He also noted that Mr. McCartney had a recent MRI of both areas and x-rays showed a right scapholunate ligament rupture and a right shoulder spinatus partial thickness tear with posterior labral cyst off the labral tear. Dr. Zervos conducted shoulder surgery on April 22, 2015. On June 29, 2015, the claims administrator issued a Deferred Compensability Decision and explained, "After a review of your accident report we cannot determine your claim to be compensable until receipt of full medical records from the treating physicians and facilities are obtained. Once evidence is submitted a review for compensability can be made. If no evidence is received within 60 days your claim will be denied." In response to the claims administrator's decision, Mr. McCartney returned a signed medical release authorization form. By Order dated August 20, 2015, the claims administrator denied Mr. McCartney's application for benefits and determined there was no evidence that the alleged injuries had been sustained in the course of and resulting from his employment. Mr. McCartney protested the claims administrator's decision. On May 27, 2016, the Office of Judges affirmed the claims administrator's Order, which denied the claim for two reasons. The Office of Judges found that Mr. McCartney failed to establish that he sustained an injury in the course of and as a result from his employment. The Office of Judges also concluded that the claim was barred by the applicable statute of limitations because an Employees and Physicians Report Form (WC-1) had not been filed by Mr. McCartney. The Office of Judges concluded that the evidence of record does not sufficiently show that Mr. McCartney's medical conditions originated from an injury that occurred on February 2, 2015. Mr. McCartney appealed to the Board of Review. In a letter dated September 21, 2016, the Board of Review notified Mr. McCartney that the Board was unable to accept new evidence except in support of a Motion to Remand. Mr. McCartney had submitted a September 15, 2016, report from Robin Goodwin, FNP-BC, of Preston Healthcare Services. Because the Board can only accept new evidence in support of a motion to remand, the Board considered Mr. McCartney's new evidence as a Motion to Remand the claim to the Office of Judges for the submission of additional evidence. On December 22, 2016, the Board of Review reversed the Decision of the Office of Judges and found that Mr.

McCartney's claim was timely filed. The Board remanded the claim with instructions to consider additional evidence and issue a ruling on the merits of the compensability of the claim. The Office of Judges was specifically instructed to issue a new time 2 frame order to allow additional evidence and consider the September 15, 2016, report from Preston Healthcare Services. In her September 16, 2016, report, Ms. Goodwin confirmed that Mr. McCartney was seen by Preston Healthcare Services in February of 2015, for an injury that occurred at work. Ms. Goodwin explained that the provider that saw Mr. McCartney for his initial visit did not document that it was a workers' compensation claim. The report documents that Mr. McCartney had slipped and fallen on company property on ice while carrying an arm load of supplies on February 2, 2015. Given the submission of Mr. McCartney's new evidence, which was accepted by the Board of Review in consideration of a motion to remand, we agree with the decision of the Board of Review. From the beginning of the claim, Mr. McCartney has asserted that he suffered an injury on a work-related basis on February 2, 2015, and sought medical treatment for his injuries. The Board of Review did not err in remanding the claim for a full and complete development of the facts in this case. 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: October 10, 2017 CONCURRED IN BY: Chief Justice Allen H. Loughry II Justice Robin J. Davis Justice Margaret L. Workman Justice Menis E. Ketchum Justice Elizabeth D. Walker 3