

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Tammi L. Connard v. Burlington United Methodist Family Services

Connard · No. 13-0155 · Decided June 27, 2014

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the Board of Review's decision refusing to add several right ankle and foot conditions to the claimant's workers' compensation claim. The court also upheld the denial of reopening for additional temporary total disability benefits, finding insufficient evidence that the conditions were causally related to the compensable injury or represented a progression or aggravation.

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	June 27, 2014
DOCKET	13-0155
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petition for appellate review of a West Virginia Workers' Compensation Board of Review order affirming the Office of Judges' affirmance of claims-administrator decisions denying additional compensable conditions and reopening for temporary total disability benefits.
STANDARD OF REVIEW	The court reviewed the Board of Review's decision for clear violation of a constitutional or statutory provision, erroneous conclusions of law, or a material misstatement or mischaracterization of the evidentiary record, and found no prejudicial error or substantial question of law.
PRECEDENTIAL VALUE	Unpublished memorandum decision with limited precedential value under West Virginia appellate practice.
PARTIES	Tammi L. Connard v. Burlington United Methodist Family Services

TOPICS

workers compensation

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judicial review of agency action

appellate procedure

standard of review

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the evidence established that right ankle sprain, acquired deformity of the right foot, right Achilles tendonitis, or right peroneal tendonitis were causally related to Connard's compensable right knee sprain and right foot contusion.
2. Whether Connard made a prima facie showing of a progression or aggravation of the compensable injury sufficient to reopen the claim for additional temporary total disability benefits.
3. Whether the Board of Review's decision was clearly erroneous under the applicable standard of review.

HOLDINGS

1. Connard failed to demonstrate that right ankle sprain, acquired deformity of the right foot, right Achilles tendonitis, or right peroneal tendonitis were causally related to the compensable right knee sprain and right foot contusion.
2. Connard did not make a prima facie showing that the compensable injury had progressed or been aggravated, and therefore was not entitled to reopen the claim for additional temporary total disability benefits.
3. The Board of Review's decision was not in clear violation of a constitutional or statutory provision, was not clearly the result of erroneous conclusions of law, and was not based 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)

FACTUAL BACKGROUND

On July 7, 2010, an overweight patient fell on Tammi Connard, injuring her right foot and knee. The claim was accepted for a right foot contusion and right knee and leg sprain. Connard had a substantial history of prior right knee and ankle injuries requiring surgery, and medical evaluations produced conflicting opinions about whether later-diagnosed right ankle sprain, right foot deformity, Achilles tendonitis, and peroneal tendonitis were caused by the compensable injury. Medical testing was generally normal, and an independent medical evaluator concluded that Connard had reached maximum medical improvement for the compensable conditions.

PROCEDURAL HISTORY

The claims administrator accepted a right foot contusion and right knee and leg sprain arising from a July 7, 2010 workplace injury. The administrator later denied adding four right ankle and foot conditions as compensable and denied reopening the claim for additional temporary total disability benefits. The Workers' Compensation Office of Judges affirmed those decisions on August 16, 2012, and the Board of Review affirmed on January 25, 2013. The Supreme Court of Appeals affirmed the Board's order in a memorandum decision.

DISPOSITION

affirmed

CASES CITED

- Harper v. State Workmen's Comp. Comm'r, 160 W. Va. 364, 370, 234 S.E.2d 779, 783 (1977)

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