

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Hobert L. Phillips Sr. v. West Virginia Office of Insurance Commissioner and Summers County Board of Education

No. 16-0664 (W. Va. July 6, 2017) · No. No. 16-0664 (BOR Appeal Nos. 2051119 and 2051120; Claim Nos. 2015022347 and 2015022348) · Decided July 6, 2017

SUMMARY

The West Virginia Supreme Court of Appeals affirmed decisions denying Hobert L. Phillips Sr.'s claims for occupational pneumoconiosis and occupational disease benefits. The court held that both claims were barred by the applicable three-year filing period and that the record lacked medical evidence supporting compensability. 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 Allen H. Loughry II; Justice Robin J. Davis; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Elizabeth D. Walker
JURISDICTION	West Virginia
DECIDED	July 6, 2017
DOCKET	No. 16-0664 (BOR Appeal Nos. 2051119 and 2051120; Claim Nos. 2015022347 and 2015022348)
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petition for review of two West Virginia Workers' Compensation Board of Review final orders affirming the Office of Judges' rejection of claims for occupational pneumoconiosis and occupational disease.
STANDARD OF REVIEW	The court reviewed whether the Board of Review's decision was in clear violation of a constitutional or statutory provision, clearly the result of erroneous conclusions of law, or based upon a material misstatement or mischaracterization of the evidentiary record.
PRECEDENTIAL VALUE	Published memorandum decision; no reporter citation appears in the source.

PARTIES

Hobert L. Phillips Sr. v. West Virginia Office of Insurance
Commissioner, Summers County Board of Education

TOPICS

workers compensation

administrative law

appellate procedure

standard of review

PRACTICE AREAS

workers compensation

employment law

administrative law

appellate procedure

QUESTIONS PRESENTED

1. Whether Phillips's 2015 claim for occupational pneumoconiosis was barred by the three-year limitations requirements in West Virginia Code § 23-4-15(c).
2. Whether Phillips's 2015 occupational disease claim was timely and supported by evidence establishing a compensable occupational disease.

HOLDINGS

1. The occupational pneumoconiosis claim was untimely under West Virginia Code § 23-4-15(c) because Phillips's last occupational exposure occurred on January 19, 1995, and the evidence did not establish that a physician had subsequently made known to him a diagnosed impairment due to occupational pneumoconiosis within the statutory period.
2. The occupational disease claim was properly rejected because it was untimely under West Virginia Code § 23-4-15(c) and the record contained no medical evidence establishing that Phillips suffered from a compensable occupational disease.
3. The Board of Review's decisions were not in clear violation of constitutional or statutory provisions, were not clearly the result of erroneous legal conclusions, and were not based on a material misstatement or mischaracterization of the evidentiary record.

KEY QUOTATIONS

"Both of his claims fail under West Virginia Code §23-4-15(c) as the three year time limit imposed in any of the scenarios has long passed." (at 3)

"Further, there is no medical evidence to support a finding of either occupational pneumoconiosis or an occupational disease." (at 3)

FACTUAL BACKGROUND

Hobert L. Phillips Sr. worked as a janitor for the Summers County Board of Education from 1973 until January 19, 1995, primarily at Pipestem Elementary School, where floor tiles allegedly contained asbestos. He previously filed an occupational pneumoconiosis claim in 1997, but the Occupational Pneumoconiosis Board found no occupational pneumoconiosis or employment-related pulmonary impairment. In 2015, Phillips filed new claims for occupational pneumoconiosis and occupational disease, attributing respiratory conditions and

bladder cancer to workplace exposure, but submitted no medical evidence establishing either condition as occupationally caused.

PROCEDURAL HISTORY

The claims administrator denied both claims on May 29, 2015. The Office of Judges affirmed the denials in separate orders dated February 16, 2016, and the Board of Review affirmed in separate final orders dated June 9, 2016. The Supreme Court of Appeals reviewed the Board's decisions and affirmed them.

DISPOSITION

affirmed