

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Danny M. Brinkley v. Brody Mining, LLC

Brinkley · No. No. 14-0187 · Decided January 23, 2015

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed a Workers' Compensation Board of Review decision awarding Danny M. Brinkley 2% permanent partial disability for a compensable workplace injury. The court held that the evidentiary record supported awards of 1% impairment for the left upper extremity and 1% for the left ankle, rejecting Brinkley's request for a 5% award.

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 Brent D. Benjamin; Justice Allen H. Loughry II; Justice Menis E. Ketchum
JURISDICTION	West Virginia
DECIDED	January 23, 2015
DOCKET	No. 14-0187
DISPOSITION	affirmed
PROCEDURAL POSTURE	Claimant appealed the West Virginia Workers' Compensation Board of Review's affirmance of a 2% permanent partial disability award granted by the Workers' Compensation Office of Judges.
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PRECEDENTIAL VALUE	Unpublished memorandum decision with limited or nonprecedential value
PARTIES	Danny M. Brinkley v. Brody Mining, LLC

TOPICS

workers compensation

appellate procedure

standard of review

administrative law

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the Board of Review erred in affirming a 2% permanent partial disability award rather than awarding the 5% impairment assessed by one independent medical evaluator.
2. Whether the evidentiary record supported the determination that Brinkley had 1% impairment of the left upper extremity and 1% impairment of the left ankle.

HOLDINGS

1. The Board of Review did not commit reversible error by affirming a 2% permanent partial disability award.
2. The evidentiary record supported a total 2% permanent partial disability award, consisting of 1% for the left upper extremity and 1% for the left ankle.

KEY QUOTATIONS

“The evidentiary record shows that Mr. Brinkley is entitled to a 2% permanent partial disability award representing 1% for the left upper extremity and 1% for the left ankle.” (3)

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

FACTUAL BACKGROUND

Danny M. Brinkley, a shuttle car operator, was injured at work on July 11, 2011, when he tripped over a line curtain he was carrying. His compensable injuries included a lower-leg injury, foot sprain, closed ulna-shaft fracture, and ankle sprain; the ulna fracture later required surgery. Three independent medical evaluations assigned differing impairment ratings, ranging from 0% to 5%, with disagreement concerning range-of-motion findings and apportionment for preexisting conditions. The Office of Judges awarded 2% permanent partial disability, based on 1% impairment of the left upper extremity and 1% impairment of the left ankle.

PROCEDURAL HISTORY

The claims administrator initially granted Brinkley a 0% permanent partial disability award. The Office of Judges reversed that decision and awarded 2% permanent partial disability, consisting of 1% for the left upper extremity and 1% for the left ankle. The Board of Review adopted the Office of Judges' findings and affirmed, and the Supreme Court of Appeals of West Virginia affirmed the Board's decision.

DISPOSITION

affirmed

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