

SUPREME COURT OF APPEALS OF WEST VIRGINIA

James R. Orren v. Magnum Coal Company

Orren v. Magnum Coal Co. · No. No. 15-0269 · Decided February 4, 2016

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed a Board of Review decision awarding James R. Orren a total of 5% permanent partial disability for his compensable right ankle injury. The court held that Orren was not entitled to an additional award based on claimed varus deformity or right knee impairment.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                      |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Appeals of West Virginia                                                                                                                                                                                                                            |
| WRITING FOR THE COURT | Chief Justice Menis E. Ketchum; Justice Robin J. Davis; Justice Brent D. Benjamin; Justice Margaret L. Workman; Justice Allen H. Loughry II                                                                                                                          |
| JURISDICTION          | West Virginia                                                                                                                                                                                                                                                        |
| DECIDED               | February 4, 2016                                                                                                                                                                                                                                                     |
| DOCKET                | No. 15-0269                                                                                                                                                                                                                                                          |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                             |
| PROCEDURAL POSTURE    | Petitioner appealed a West Virginia Workers’ Compensation Board of Review order affirming an Office of Judges order that awarded him an additional 2% permanent partial disability for his compensable right ankle injury.                                           |
| STANDARD OF REVIEW    | The Board of Review's decision is affirmed 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    | Nonprecedential memorandum decision                                                                                                                                                                                                                                  |
| PARTIES               | James R. Orren v. Magnum Coal Company                                                                                                                                                                                                                                |

TOPICS

- workers compensation
- appellate procedure
- standard of review
- administrative law

## PRACTICE AREAS

Workers compensation

Administrative law

Appellate procedure

## QUESTIONS PRESENTED

1. Whether Orren was entitled to an additional 5% permanent partial disability award based on the entirety of Dr. Guberman's impairment assessment, including impairment for varus deformity.
2. Whether the Board of Review clearly erred by affirming the Office of Judges' award of only an additional 2% permanent partial disability for the compensable right ankle injury.

## HOLDINGS

1. The Board of Review did not clearly violate a constitutional or statutory provision, reach an erroneous conclusion of law, or materially misstate or mischaracterize the evidentiary record by affirming an additional 2% award, resulting in a total 5% permanent partial disability award for the right ankle.
2. An appellate court will not disturb the Board of Review's decision when it is not in clear violation of a constitutional or statutory provision, is not clearly the result of an erroneous conclusion of law, and is 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.” (3)*

## FACTUAL BACKGROUND

Orren, an underground coal miner, injured his right knee and ankle on May 3, 2009, when his leg became caught on a forklift scoop. The claim was held compensable for a right ankle medial malleolus fracture and knee contusion. Multiple physicians issued differing impairment evaluations, ranging from 1% to 10% whole-person impairment, but the administrative tribunals credited the ankle range-of-motion assessments supporting a total 5% award and rejected additional impairment ratings for varus deformity and the right knee.

## PROCEDURAL HISTORY

The claims administrator initially awarded Orren 1% permanent partial disability and later granted no additional award beyond a prior 3% award. The Office of Judges reversed in part and awarded an additional 2%, for a total 5% award for the right ankle. The Board of Review affirmed, and Orren appealed to the Supreme Court of Appeals of West Virginia, which affirmed the Board's decision.

## DISPOSITION

affirmed

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