

## SUPREME COURT OF APPEALS OF WEST VIRGINIA

### Bevins v. West Virginia Office of Insurance Commissioner

227 W. Va. 315 (2010) · No. Case Nos. 35548 and 35219 · Decided October 14, 2010

#### SUMMARY

The West Virginia Supreme Court of Appeals considered whether an injured worker may receive temporary total disability workers' compensation benefits while also receiving Social Security disability benefits for the same compensable injury. The court held that receipt of Social Security disability benefits does not categorically bar temporary total disability benefits, but claimants must independently establish eligibility based on a progression or aggravation of the compensable injury or other qualifying medical evidence. The court reversed the Board of Review's decision in Bevins's case and remanded Greathouse's case for further factual development.

#### CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                 |
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| COURT                 | Supreme Court of Appeals of West Virginia                                                                                                                                                                                                                                                                                                                                                                                       |
| WRITING FOR THE COURT | Davis, Chief Justice                                                                                                                                                                                                                                                                                                                                                                                                            |
| JURISDICTION          | West Virginia                                                                                                                                                                                                                                                                                                                                                                                                                   |
| DECIDED               | October 14, 2010                                                                                                                                                                                                                                                                                                                                                                                                                |
| DOCKET                | Case Nos. 35548 and 35219                                                                                                                                                                                                                                                                                                                                                                                                       |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                                                                                                                                                                                           |
| PROCEDURAL POSTURE    | Two consolidated appeals from orders of the West Virginia Workers' Compensation Board of Review denying reopening applications and temporary total disability benefits because the claimants were receiving Social Security disability benefits.                                                                                                                                                                                |
| STANDARD OF REVIEW    | Under W. Va. Code § 23-5-15(b) and (d), the Court gives deference to the Board of Review's findings, reasoning, and conclusions and may reverse a Board decision reversing a prior ruling only when it clearly violates constitutional or statutory provisions, results from erroneous conclusions of law, or is clearly wrong based on the evidentiary record. The Court may not conduct a de novo reweighing of the evidence. |
| PRECEDENTIAL VALUE    | Published precedential opinion of the Supreme Court of Appeals of West Virginia.                                                                                                                                                                                                                                                                                                                                                |
|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                 |

## PARTIES

Charles W. Bevins, Marty L. Greathouse v. West Virginia Office of Insurance Commissioner

## TOPICS

workers compensation

administrative law

judicial review of agency action

statutory interpretation

insurance

## PRACTICE AREAS

workers compensation

administrative law

statutory interpretation

social security benefits

## QUESTIONS PRESENTED

1. Whether receipt of Social Security disability benefits for the same compensable injury bars a claimant from simultaneously receiving temporary total disability workers' compensation benefits.
2. Whether a claimant seeking additional temporary total disability benefits after reopening must independently establish a progression or aggravation of the compensable injury or other medical evidence supporting eligibility.
3. Whether federal Social Security offset provisions prevent an impermissible double recovery when a claimant receives both Social Security disability and workers' compensation benefits.

## HOLDINGS

1. A claimant may simultaneously receive temporary total disability workers' compensation benefits and Social Security disability benefits for the same compensable injury. Receipt of Social Security disability benefits alone does not bar temporary total disability benefits.
2. Although Social Security disability benefits do not bar temporary total disability benefits, a claimant seeking additional benefits after reopening must independently demonstrate a progression or aggravation of the compensable injury or other medical evidence establishing eligibility.
3. When a claimant receives temporary total disability workers' compensation benefits and Social Security disability benefits for the same compensable injury, the federal offset provisions in 42 U.S.C. § 424a operate to prevent an impermissible double recovery.

## KEY QUOTATIONS

*"Accordingly, we hold that a claimant simultaneously may receive temporary total disability workers' compensation benefits while also receiving Social Security disability benefits for the same compensable injury."* (227 W. Va. at 328)

*"Therefore, we hold that when a claimant simultaneously receives temporary total disability workers' compensation benefits while also receiving Social Security disability benefits for the same compensable injury, the federal offset provisions set forth in 42 U.S.C. § 424a (1994) (2006 ed.) operate to preclude the claimant from receiving an impermissible double recovery of benefits."* (227 W. Va. at 330)

## FACTUAL BACKGROUND

Charles Bevins suffered a compensable back and ankle injury while working as a coal miner and later underwent surgery related to the injury on November 27, 2007. He received Social Security disability benefits and sought temporary total disability benefits during his postoperative recovery. Marty Greathouse suffered compensable arm, neck, and shoulder injuries while working as a security guard, later alleged an aggravation or progression of those injuries, and sought additional temporary total disability benefits while receiving Social Security disability benefits. The Board denied both claims on the theory that Social Security disability benefits meant the claimants had no wages to replace.

## PROCEDURAL HISTORY

The Claims Manager denied both claimants' applications to reopen their workers' compensation claims for additional temporary total disability benefits. The Office of Judges reversed and awarded benefits, but the Board of Review reversed the Office of Judges in both cases. The Supreme Court of Appeals consolidated the appeals, reversed both Board orders, directed an award of benefits for Bevins, and remanded Greathouse's claim for further factual development.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

In Case No. 35548, enter an order awarding Bevins temporary total disability benefits connected with his November 27, 2007 surgery, subject to the statutory maximum. In Case No. 35219, conduct further factual development to determine whether Greathouse sustained a progression or aggravation of his compensable injury sufficient to warrant temporary total disability benefits.

## CASES CITED

- Bragg v. State Workmen's Compensation Commissioner, 152 W. Va. 706, 166 S.E.2d 162 (1969)
- Allen v. Workers' Compensation Commissioner, 173 W. Va. 238, 314 S.E.2d 401 (1984)
- Mitchell v. State Workmen's Compensation Commissioner, 163 W. Va. 107, 256 S.E.2d 1 (1979)
- Wilson v. Workers' Compensation Commissioner, 174 W. Va. 611, 328 S.E.2d 485 (1984)
- Harper v. State Workmen's Compensation Commissioner, 160 W. Va. 364, 234 S.E.2d 779 (1977)
- Dunlap v. State Compensation Director, 149 W. Va. 266, 140 S.E.2d 448 (1965)
- Simpson v. West Virginia Office of Insurance Commissioner, 223 W. Va. 495, 678 S.E.2d 1 (2009)
- Bounds v. State Workmen's Compensation Commissioner, 153 W. Va. 670, 172 S.E.2d 379 (1970)
- Martin v. Randolph County Board of Education, 195 W. Va. 297, 465 S.E.2d 399 (1995)
- Connecticut National Bank v. Germain, 503 U.S. 249, 112 S. Ct. 1146, 117 L. Ed. 2d 391 (1992)
- State v. General Daniel Morgan Post No. 548, Veterans of Foreign Wars, 144 W. Va. 137, 107 S.E.2d 353 (1959)

- West Virginia Health Care Cost Review Authority v. Boone Memorial Hospital, 196 W. Va. 326, 472 S.E.2d 411 (1996)
- Banker v. Banker, 196 W. Va. 535, 474 S.E.2d 465 (1996)
- State ex rel. Roy Allen S. v. Stone, 196 W. Va. 624, 474 S.E.2d 554 (1996)
- Johnson v. Continental Casualty Co., 157 W. Va. 572, 201 S.E.2d 292 (1973)
- Collins v. AAA Homebuilders, Inc., 175 W. Va. 427, 333 S.E.2d 792 (1985)
- State ex rel. Baker v. Bolyard, 221 W. Va. 713, 656 S.E.2d 464 (2007)
- U.S. West Communications, Inc. v. Industrial Claim Appeals Office of State of Colorado, 978 P.2d 154 (Colo. App. 1999)
- Frost v. Chater, 952 F. Supp. 659 (D.N.D. 1996)
- Cody v. Industrial Claim Appeals Office of State of Colorado, 940 P.2d 1042 (Colo. App. 1996)
- Sonnier v. Town of Vinton, 759 So. 2d 818 (La. Ct. App. 1999)
- Manchester v. Drivers Management, LLC, 278 Neb. 776, 775 N.W.2d 179 (2009)
- Richardson v. Belcher, 404 U.S. 78, 92 S. Ct. 254, 30 L. Ed. 2d 231 (1971)

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