

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Jesus Munoz v. Mining Controls, LLC

Munoz · No. No. 14-0684 (BOR Appeal No. 2049201) (Claim No. 2012033616) · Decided May 7, 2015

SUMMARY

The West Virginia Supreme Court of Appeals affirmed a Workers’ Compensation Board of Review decision awarding Jesus Munoz 0% permanent partial disability for compensable lumbar sprain injuries. The Court held that the record supported the use of Lumbar Category I under West Virginia Code of State Rules § 85-20-Table C and that Munoz presented no medical evidence refuting the impairment evaluation.

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 Menis E. Ketchum; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	May 7, 2015
DOCKET	No. 14-0684 (BOR Appeal No. 2049201) (Claim No. 2012033616)
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petition for appeal from the West Virginia Workers’ Compensation Board of Review’s final order affirming the Office of Judges’ order, which affirmed the claims administrator’s 0% permanent partial disability award.
STANDARD OF REVIEW	The Board of Review’s decision would be reversed only if it clearly violated a constitutional or statutory provision, resulted from erroneous conclusions of law, or was based on a material misstatement or mischaracterization of the evidentiary record.
PRECEDENTIAL VALUE	Unpublished memorandum decision; the opinion states that it is issued under Rule 21 of the West Virginia Rules of Appellate Procedure.
PARTIES	Jesus Munoz v. Mining Controls, LLC

TOPICS

workers compensation

appellate procedure

standard of review

administrative law

PRACTICE AREAS

Workers' compensation

Administrative law

Employment law

Appellate procedure

QUESTIONS PRESENTED

1. Whether the Board of Review erred by affirming the determination that Munoz belonged in Lumbar Category I rather than Lumbar Category II under West Virginia Code of State Rules § 85-20-Table C.
2. Whether the Board of Review's decision affirming a 0% permanent partial disability award violated a constitutional or statutory provision, resulted from an erroneous conclusion of law, or rested on a material misstatement or mischaracterization of the evidentiary record.

HOLDINGS

1. The Board of Review properly affirmed the 0% permanent partial disability award because the only physician who performed an independent medical evaluation and provided a permanent impairment rating placed Munoz in Lumbar Category I, and Munoz presented no medical evidence to refute that recommendation.
2. The Board of Review's decision was not in clear violation of a constitutional or statutory provision, was not clearly the result of an erroneous conclusion of law, and was not based on a material misstatement or mischaracterization of the evidentiary record.

KEY QUOTATIONS

"The rating physician must identify the appropriate impairment category and then assign an impairment within the appropriate range designated for that category." (2)

"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." (2)

FACTUAL BACKGROUND

Munoz sustained compensable lower-back injuries on July 26, 2011, and April 3, 2012, when he bent over to pick up objects. The compensable diagnosis appears to have been limited to lumbar sprain. Dr. Prasadarao Mukkamala determined that Munoz had reached maximum medical improvement, assigned 1% whole-person impairment based on lumbar range-of-motion abnormalities, and placed him in Lumbar Category I under West Virginia Code of State Rules § 85-20-Table C, resulting in a 0% permanent partial disability award. Munoz presented no medical evidence refuting that recommendation and argued that he should instead have been placed in Lumbar Category II, warranting a 5% award.

PROCEDURAL HISTORY

The claims administrator granted Munoz a 0% permanent partial disability award based on an independent medical evaluation. The Workers' Compensation Office of Judges affirmed that decision, and the Board of Review affirmed the Office of Judges on July 7, 2014. The Supreme Court of Appeals reviewed the Board's decision and affirmed it by memorandum decision.

DISPOSITION

affirmed

OPINION

PER CURIAM.

STATE OF WEST VIRGINIA FILED SUPREME COURT OF APPEALS May 7, 2015 RORY L. PERRY II, CLERK SUPREME COURT OF APPEALS JESUS MUNOZ, OF WEST VIRGINIA Claimant Below, Petitioner vs.) No. 14-0684 (BOR Appeal No. 2049201) (Claim No. 2012033616) MINING CONTROLS, LLC, Employer Below, Respondent MEMORANDUM DECISION Petitioner Jesus Munoz, by William B. Gerwig III, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review.

Mining Controls, LLC, by T. Jonathan Cook, its attorney, filed a timely response. This appeal arises from the Board of Review's Final Order dated July 7, 2014, in which the Board affirmed a February 12, 2014, Order of the Workers' Compensation Office of Judges.

In its Order, the Office of Judges affirmed the claims administrator's February 7, 2013, decision granting Mr. Munoz a 0% permanent partial disability award. The Court has carefully reviewed the records, written arguments, and appendices contained in the briefs, and the case is mature for consideration. This Court has considered the parties' briefs and the record on appeal.

The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error.

For these reasons, a memorandum decision is appropriate under Rule 21 of the Rules of Appellate Procedure. Mr. Munoz injured his lower back on July 26, 2011, and April 3, 2012. Both injuries occurred when Mr. Munoz bent over to pick up an object on the ground.

Although the claims administrator's decisions holding the claims compensable are not contained in the evidentiary record, it appears that the only compensable diagnosis is a lumbar sprain. On August 3, 2012, Syed Zahir, M.D., evaluated Mr. Munoz and opined that he required further treatment amid complaints of radiating lower back pain, including a repeat MRI and neurosurgical evaluation.

He recommended that Mr. Munoz be re-evaluated in four to six months. On January 16, 2013, 1 Prasadarao Mukkamala, M.D., performed an independent medical evaluation. He determined that Mr. Munoz had reached maximum medical improvement with respect to the compensable injuries. Dr. Mukkamala opined that Mr. Munoz sustained 1% whole person impairment as a result of range of motion abnormalities in the lumbar spine.

He then determined that Mr. Munoz should be placed in Lumbar Category I of West Virginia Code of State Rules § 85-20-Table C (2006), with an impairment rating of 0%, and therefore concluded that Mr. Munoz sustained 0% whole person impairment as a result of his compensable injuries. Based upon Dr. Mukkamala's evaluation, the claims administrator granted Mr. Munoz a 0% permanent partial disability award.

In its Order affirming the February 7, 2013, claims administrator's decision, the Office of Judges held that Mr. Munoz failed to demonstrate that the claims administrator erred in granting him a 0% permanent partial disability award.

The Board of Review affirmed the reasoning and conclusions of the Office of Judges in its decision dated July 7, 2014. On appeal to this Court Mr. Munoz argues that based upon the evidence of record, the Board of Review, Office of Judges, and claims administrator erred in failing to enter a finding placing him in Lumbar Category II of West Virginia Code of State Rules § 85-20-Table C and thereby granting him a 5% permanent partial disability award.

Regarding Mr. Munoz's argument that the Board of Review, Office of Judges, and claims administrator should have placed him in Lumbar Category II of West Virginia Code of State Rules § 85-20-Table C, rather than Lumbar Category I of West Virginia Code of State Rules § 85-20-Table C as recommended by Dr. Mukkamala, West Virginia Code of State Rules § 85-20 64.2 (2006) provides: The range of motion methodology for assessing permanent impairment shall be used.

However, a single injury or cumulative injuries that lead to a permanent impairment to the Lumbar Spine area of one's person shall cause an injured worker to be eligible to receive a permanent partial disability award within the ranges identified in West Virginia Code of State Rules § 85-20-Table C. The rating physician must identify the appropriate impairment category and then assign an impairment within the appropriate range designated for that category.

Dr. Mukkamala, as the only physician of record to perform an independent medical evaluation and provide a permanent impairment rating, identified Lumbar Category I of West Virginia Code of State Rules § 85-20-Table C as the appropriate impairment category, and Mr. Munoz received an impairment award consistent with Dr. Mukkamala's findings.

As was noted by the Office of Judges, Mr. Munoz did not submit any medical evidence refuting Dr. Mukkamala's recommendation. 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.

Therefore, the decision of the Board of Review is affirmed. 2 Affirmed. ISSUED: May 7, 2015
CONCURRED IN BY: Chief Justice Margaret L. Workman Justice Robin J. Davis Justice Brent
D. Benjamin Justice Menis E. Ketchum Justice Allen H. Loughry II 3