

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Deborah S. Best v. West Virginia Office of Insurance
Commissioner/Robert E. Games, Jr.

No. 13-0874 (BOR Appeal No. 2048185) (Claim No. 970042889) · No. No. 13-0874 (BOR Appeal No. 2048185) (Claim No. 970042889) · Decided October 21, 2014

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the Board of Review's decision denying Deborah S. Best's application for permanent total disability benefits as untimely. The court held that the application was filed nearly seven years after her initial permanent partial disability award and therefore exceeded the five-year limitation period under West Virginia Code § 23-4-16(a)(2).

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per curiam; Chief Justice Robin J. Davis; Justice Brent D. Benjamin; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	October 21, 2014
DOCKET	No. 13-0874 (BOR Appeal No. 2048185) (Claim No. 970042889)
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner's appeal from the West Virginia Workers' Compensation Board of Review's affirmance of an Office of Judges order upholding the claims administrator's denial of her application for permanent total disability benefits as untimely.
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 an erroneous conclusion of law, or based on a material misstatement or mischaracterization of the evidentiary record.
PRECEDENTIAL VALUE	Published memorandum decision; the opinion states that it is issued under West Virginia Rule of Appellate Procedure 21.
PARTIES	Deborah S. Best v. West Virginia Office of Insurance Commissioner, Robert E. Games, Jr.

TOPICS

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administrative law

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether Best's application for permanent total disability benefits was timely under West Virginia Code § 23-4-16(a)(2), which imposed a five-year filing period measured from the initial permanent partial disability award.
2. Whether the claims administrator waived its timeliness objection by initially considering Best's application.
3. Whether *Harris v. West Virginia Office of Insurance Commissioner* required a different application of the statutory time limit.

HOLDINGS

1. An application for permanent total disability benefits must be filed within the five-year period established by West Virginia Code § 23-4-16(a)(2), measured from the claimant's initial permanent partial disability award; Best's application, filed almost seven years after that award, was untimely.
2. Because Best's application was untimely, the claims administrator lacked jurisdiction to consider it, and the claims administrator did not waive the timeliness objection by initially considering the application.

KEY QUOTATIONS

“Since she did not timely file her application, the claims administrator did not have jurisdiction to consider request. Her application was properly refused.” (at 2)

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

FACTUAL BACKGROUND

Best sustained compensable back, neck, head, arm, psychiatric, jaw, and headache-related injuries in a 1997 automobile accident that occurred while she was working. She received an initial 24% permanent partial disability award on July 20, 1999, followed by additional awards and recognition of further compensable conditions. She filed an application for permanent total disability benefits on April 25, 2006, nearly seven years after the initial permanent partial disability award. The claims administrator denied the application as untimely under West Virginia Code § 23-4-16(a)(2) (2005).

PROCEDURAL HISTORY

The claims administrator denied Best's application for permanent total disability benefits on November 23, 2011, concluding that it was filed more than five years after her initial permanent partial disability award. The Office

of Judges affirmed on February 6, 2013, and the Board of Review affirmed on July 31, 2013. Best appealed to the Supreme Court of Appeals of West Virginia, which affirmed the Board's decision.

DISPOSITION

affirmed

CASES CITED

- Harris v. W. Va. Office of Ins. Comm'r, No. 101060, 2012 WL 2874133 (Jan. 19, 2012)
- Ellis v. W. Va. Office of Ins. Comm'r, No. 13-0014, 2014 WL 2594067 (June 10, 2014)

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