

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Gabriele M. Bischof v. Wood County Board of Education

No. 16-0297 · No. No. 16-0297 (BOR Appeal No. 2050775) (Claim No. 2011009204) · Decided March 3, 2017

SUMMARY

The West Virginia Supreme Court of Appeals reversed and remanded a Workers' Compensation Board of Review decision denying authorization for a lumbar spine MRI. The court held that the denial was based on a material mischaracterization of the evidentiary record because the MRI was necessary for preoperative planning related to treatment of compensable lumbar radiculopathy and an L5-S1 disc herniation. Two justices dissented, concluding that the MRI was related to the claimant's pre-existing spondylolisthesis and stenosis.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per curiam; Justice Robin J. Davis; Justice Margaret L. Workman; Justice Menis E. Ketchum; Chief Justice Allen H. Loughry II; Justice Elizabeth D. Walker
JURISDICTION	West Virginia
DECIDED	March 3, 2017
DOCKET	No. 16-0297 (BOR Appeal No. 2050775) (Claim No. 2011009204)
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Petitioner's appeal from a West Virginia Workers' Compensation Board of Review final order affirming the Office of Judges' order, which affirmed the claims administrator's denial of authorization for a lumbar spine MRI.
STANDARD OF REVIEW	The court considered the applicable standard of review and reviewed whether the Board of Review's decision was based upon a material mischaracterization of the evidentiary record.
PRECEDENTIAL VALUE	limited
PARTIES	Gabriele M. Bischof v. Wood County Board of Education

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QUESTIONS PRESENTED

1. Whether the Board of Review erred by affirming denial of authorization for a lumbar spine MRI requested for preoperative planning.
2. Whether the requested MRI was reasonably required for treatment of compensable conditions rather than solely for treatment of pre-existing, noncompensable spondylolisthesis and stenosis.

HOLDINGS

1. The Board of Review erred because its decision was based upon a material mischaracterization of the evidentiary record; the requested lumbar spine MRI was necessary for successful preoperative planning and had to be authorized.

KEY QUOTATIONS

“Therefore, pursuant to our decision in Appeal No. 15-1242, we find that the decisions of the Board of Review and Office of Judges are based upon a material mischaracterization of the evidentiary record.” (2)

“Therefore, the decision of the Board of Review is reversed, and the claim is remanded with instructions to authorize the requested lumbar spine MRI.” (3)

FACTUAL BACKGROUND

Bischof, a school bus driver, injured her lower back on August 27, 2010, while attempting to prevent a child from exiting a school bus prematurely. Her workers' compensation claim was held compensable for lower back sprain, lower back pain, lumbosacral neuritis/radiculitis, and later an L5-S1 disc herniation. Imaging and treatment documented L5-S1 spondylolisthesis, stenosis, radiating right-leg pain, and lumbar radiculopathy; Dr. Walker ultimately performed an L5-S1 decompression and fusion and stated that the injury caused her current pain despite the likely pre-existing nature of the spondylolisthesis. The requested MRI was sought for preoperative planning, but the claims administrator denied it as related to noncompensable pre-existing conditions.

PROCEDURAL HISTORY

The claims administrator denied authorization for a lumbar spine MRI requested by Dr. Walker. The Workers' Compensation Office of Judges affirmed that denial on August 10, 2015, and the Board of Review affirmed on March 1, 2016. The Supreme Court of Appeals reversed and remanded, relying on its decision in a related appeal involving authorization of the underlying decompression surgery, physical therapy, and pre-admission testing.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The claim was remanded with instructions to authorize the requested lumbar spine MRI.

CASES CITED

- Gabriele M. Bischof v. Wood County Board of Education, No. 15-1242, 2016 WL 6803369 (W. Va. Nov. 17, 2016) (memorandum decision)
- Bischof v. Wood County Bd. of Educ., No. 15-1242 (W. Va. Nov. 17, 2016) (memorandum decision)

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