

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Freddie E. Marcum v. Wayne County Board of Education

Marcum · No. No. 12-0596 · Decided December 17, 2013

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the Board of Review’s decision denying Freddie E. Marcum an additional permanent partial disability award. The court concluded that his 10% impairment for thoracic and lumbar components had been fully compensated by a prior 13% award and that the Board’s decision contained no clear legal or factual error.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Brent D. Benjamin; Justice Robin J. Davis; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	December 17, 2013
DOCKET	No. 12-0596
DISPOSITION	affirmed
PROCEDURAL POSTURE	Claimant appealed the West Virginia Workers’ Compensation Board of Review’s affirmance of an Office of Judges order denying an additional permanent partial disability award.
STANDARD OF REVIEW	The Board of Review’s decision was reviewed for clear violation of a constitutional or statutory provision, clearly erroneous conclusions of law, or a material misstatement or mischaracterization of the evidentiary record.
PRECEDENTIAL VALUE	Published memorandum decision
PARTIES	Freddie E. Marcum v. Wayne County Board of Education

TOPICS

workers compensation

administrative law

appellate procedure

standard of review

remedies

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Board of Review erred in affirming the denial of an additional permanent partial disability award.
2. Whether the Board of Review's decision violated a constitutional or statutory provision, resulted from an erroneous conclusion of law, or was based on a material misstatement or mischaracterization of the evidentiary record.

HOLDINGS

1. Marcum was not entitled to an additional permanent partial disability award because the 10% impairment assessed for the thoracic and lumbar components of the claim had already been fully compensated by his prior 13% permanent partial disability award for those same components.
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

"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

Freddie E. Marcum, a custodian for the Wayne County Board of Education, injured his back while unloading tables from a truck on December 1, 2009. His workers' compensation claim was held compensable for sacroiliac sprain/strain, thoracic disc herniation, and lumbar sprain/strain. One physician assessed 10% whole-person impairment for the thoracic and lumbar components, while another assessed 0%; the tribunals below concluded that Marcum's prior 13% permanent partial disability award for the same components fully compensated the assessed impairment.

PROCEDURAL HISTORY

The claims administrator denied Marcum a permanent partial disability award on July 22, 2010. The Workers' Compensation Office of Judges affirmed that decision on November 29, 2011, and the Board of Review affirmed on April 20, 2012. The Supreme Court of Appeals reviewed the Board's order and affirmed it, finding no clear legal or constitutional error and no material misstatement of the evidentiary record.

DISPOSITION

affirmed

OPINION

PER CURIAM.

STATE OF WEST VIRGINIA SUPREME COURT OF APPEALS FILED FREDDIE E. MARCUM, December 17, 2013 RORY L. PERRY II, CLERK Claimant Below, Petitioner SUPREME COURT OF APPEALS OF WEST VIRGINIA vs.) No. 12-0596 (BOR Appeal No. 2046713) (Claim No. 2010116360) WAYNE COUNTY BOARD OF EDUCATION, Employer Below, Respondent MEMORANDUM DECISION Petitioner Freddie E. Marcum, appearing pro se, appeals the decision of the West Virginia Workers' Compensation Board of Review.

The Wayne County Board of Education, by Matthew L. Williams, its attorney, filed a timely response. This appeal arises from the Board of Review's Final Order dated April 20, 2012, in which the Board affirmed a November 29, 2011, Order of the Workers' Compensation Office of Judges.

In its Order, the Office of Judges affirmed the claims administrator's July 22, 2010, decision granting Mr. Marcum no 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. Marcum worked as a custodian for the Wayne County Board of Education. On December 1, 2009, he suffered an injury to his back while unloading tables from a truck.

The claim was held compensable for sacroiliac sprain/strain, thoracic disc herniation, and lumbar sprain/strain. On April 5, 2010, Dr. Monderewicz concluded that Mr. Marcum had a 10% whole person impairment with 5% for the thoracic and 5% for the lumbar. Dr. Mukkamala recommended a 0% impairment.

On July 21, 2010, and concluded that Mr. Marcum had been fully compensated by his prior permanent partial disability award of 13%. The claims administrator granted no permanent partial disability award based on the April 15, 2009, 1 evaluation by Dr. Monderewicz, who found that Mr. Marcum had a 10% impairment in this claim that had been fully compensated by his prior permanent partial disability award of 13%.

The Office of Judges affirmed the claims administrator's decision and held that Mr. Marcum had a 10% impairment for his lumbar and thoracic components in this claim and had received a prior permanent partial disability award of 13% for these same components in a prior claim.

Therefore, it concluded that Mr. Marcum had been adequately compensated. Mr. Marcum disagrees and asserts that all of his evidence was not taken into consideration. The Wayne County Board of Education maintains that Mr. Marcum's 10% impairment has been fully compensated by his prior permanent partial disability award of 13%.

The Office of Judges granted Mr. Marcum no additional permanent partial disability award. The Office of Judges concluded that Mr. Marcum's claim is not entitled to further evaluation because the diagnosis of thoracic disc herniation was considered by Dr. Monderewicz before it was added as a compensable component on May 28, 2010.

The Office of Judges found that Mr. Marcum's prior permanent partial disability award of 13% was for the lumbar and thoracic components. Dr. Mukkamala recommended a 0% impairment and concluded that the 10% recommended by Dr. Monderewicz for the thoracic and lumbar components has been fully compensated by Mr. Marcum's prior permanent partial disability award of 13%.

The Office of Judges held that the 10% impairment for the thoracic and lumbar components was fully compensated by Mr. Marcum's prior permanent partial disability award of 13%, and that he is not entitled to any additional permanent partial disability award.

The Board of Review reached the same reasoned conclusions in its decision of April 20, 2012. We agree with the reasoning and conclusions of the Board of Review. 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. Affirmed. ISSUED: December 17, 2013 CONCURRED IN BY: Chief Justice Brent D. Benjamin Justice Robin J. Davis Justice Margaret L. Workman Justice Menis E. Ketchum Justice Allen H. Loughry II 2