

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

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