

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Thomas Rotruck v. West Virginia University - BOR

No. No. 16-1092; BOR Appeal No. 2051314; Claim No. 2011026616, Supreme Court of Appeals of West Virginia (September 15, 2017)

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the denial of an additional permanent partial disability award to Thomas Rotruck for a compensable right shoulder injury. The court agreed that a later, intervening shoulder injury was unrelated to the workers' compensation claim and that the pre-intervening-injury impairment evaluation was the more reliable basis for rating the compensable injury.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per curiam; Chief Justice Allen H. Loughry II; Justice Robin J. Davis; Justice Margaret L. Workman; Justice Elizabeth D. Walker; Justice Menis E. Ketchum
JURISDICTION	West Virginia
DECIDED	September 15, 2017
DOCKET	No. 16-1092; BOR Appeal No. 2051314; Claim No. 2011026616
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner appealed the West Virginia Workers' Compensation Board of Review's affirmance of the claims administrator's denial of an additional permanent partial disability award.
STANDARD OF REVIEW	The Board of Review's decision would be reversed only if it were in clear violation of a constitutional or statutory provision, clearly resulted from erroneous conclusions of law, or was based upon a material misstatement or mischaracterization of the evidentiary record.
PRECEDENTIAL VALUE	Memorandum decision; the source identifies the opinion as published, but the opinion itself does not state a separate precedential designation.
PARTIES	Thomas Rotruck v. West Virginia University - BOR

TOPICS

workers compensation

appellate procedure

standard of review

administrative law

PRACTICE AREAS

workers compensation

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QUESTIONS PRESENTED

1. Whether Rotruck was entitled to an additional permanent partial disability award for his compensable right shoulder injury.
2. Whether the Board of Review properly relied on the pre-intervening-injury impairment evaluation and rejected the higher post-intervening-injury evaluation.

HOLDINGS

1. Rotruck was not entitled to an additional permanent partial disability award because the reliable evidence showed 4% impairment, which was equal to the 4% award he had already received.
2. The Board of Review's decision did not clearly violate a constitutional or statutory provision, result from erroneous conclusions of law, or rest on a material misstatement or mischaracterization of the evidentiary record.

KEY QUOTATIONS

"The evidence indicates Mr. Rotruck largely recovered from his compensable right shoulder injury and then sustained a separate, intervening injury to that shoulder." (at 3)

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

FACTUAL BACKGROUND

Thomas Rotruck, a maintenance worker, injured his lower back, right hip, right leg, and right shoulder when he fell while clearing ice from sidewalks on February 1, 2011. His compensable right shoulder injury was treated with arthroscopy, acromioplasty, and rotator cuff repair, and he had previously received a 4% permanent partial disability award. After returning to full duty, Rotruck injured the same shoulder during a May 20, 2014, procedure for his left shoulder, resulting in a large recurrent rotator cuff tear that could not be repaired. The medical evaluations differed on the amount of impairment attributable to the compensable injury, but the Office of Judges found the evaluation conducted before the intervening injury more reliable than the evaluation conducted afterward.

PROCEDURAL HISTORY

The claims administrator granted no additional permanent partial disability award on September 15, 2014. The Office of Judges affirmed that decision on May 13, 2016, and the Board of Review affirmed the Office of Judges on October 24, 2016. The Supreme Court of Appeals of West Virginia reviewed the Board's decision and affirmed it in a memorandum decision.

DISPOSITION

affirmed

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