

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Christopher L. Sizemore v. L & G Trucking, Inc.

No. No. 12-0063, Supreme Court of Appeals of West Virginia (October 4, 2013)

SUMMARY

The West Virginia Supreme Court of Appeals affirmed a decision awarding Christopher L. Sizemore 4% permanent partial disability for psychiatric impairment arising from a compensable workplace injury. The court held that the Board of Review's decision was not clearly erroneous or legally improper and adopted the reasoning that the 4% evaluation was the only persuasive medical assessment.

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	October 4, 2013
DOCKET	No. 12-0063
DISPOSITION	affirmed
PROCEDURAL POSTURE	Claimant appealed the West Virginia Workers' Compensation Board of Review's affirmance of a decision awarding him 4% permanent partial disability for psychiatric impairment.
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 erroneous conclusions of law, or based upon a material misstatement or mischaracterization of the evidentiary record.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Christopher L. Sizemore v. L & G Trucking, Inc.

TOPICS

workers compensation

administrative law

standard of review

appellate procedure

PRACTICE AREAS

workers compensation

administrative law

employment law

QUESTIONS PRESENTED

1. Whether the Office of Judges improperly relied on Sizemore's Global Assessment of Functioning score in evaluating his psychiatric impairment.
2. Whether the Office of Judges erred in finding Dr. Faheem's 4% impairment recommendation more persuasive than the 10% and 6% recommendations of Dr. Riaz and Dr. Hasan.
3. Whether the Board of Review's affirmance of the 4% permanent partial disability award was clearly erroneous under the applicable appellate standard.

HOLDINGS

1. The Board of Review's decision affirming a 4% permanent partial disability award for psychiatric impairment was not in clear violation of a constitutional or statutory provision, was not clearly the result of erroneous conclusions 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

Sizemore injured his knee when his left foot slipped from a tractor-trailer step while he was climbing out of the vehicle. The claim was held compensable for several physical injuries and for adjustment reaction with adjustment disorder and depressed mood. Three physicians recommended psychiatric impairment ratings of 4%, 10%, and 6%, respectively. The Office of Judges and Board of Review found the 4% recommendation more persuasive because the associated Global Assessment of Functioning score reflected mild symptoms and the record did not establish permanent moderate or serious psychiatric symptoms caused by the compensable injury.

PROCEDURAL HISTORY

The claims administrator granted Christopher L. Sizemore a 4% permanent partial disability award for psychiatric impairment on March 18, 2010. The Workers' Compensation Office of Judges affirmed that decision on August 16, 2011, and the Board of Review affirmed on December 22, 2011. The Supreme Court of Appeals of West Virginia affirmed the Board's order, finding no substantial question of law or prejudicial error.

DISPOSITION

affirmed

OPINION

Christopher L. Sizemore v. L & G Trucking

PER CURIAM.

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

CHRISTOPHER L. SIZEMORE, October 4, 2013

RORY L. PERRY II, CLERK

Claimant Below, Petitioner SUPREME COURT OF APPEALS

OF WEST VIRGINIA

vs.) No. 12-0063 (BOR Appeal No. 2046253) (Claim No. 2008024363)

L & G TRUCKING, INC.,

Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Christopher L. Sizemore, by Reginald D. Henry, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. L & G Trucking, Inc., by Bradley A. Crouser, its attorney, filed a timely response. This appeal arises from the Board of Review's Final Order dated December 22, 2011, in which the Board affirmed an August 16, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's March 18, 2010, decision granting Mr. Sizemore a 4% permanent partial disability award for his psychiatric impairment. 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. Sizemore injured his knee when he was climbing out of a tractor trailer and his left foot slipped off the step. The claim was held compensable for sprain/strain of right knee and leg; contusion of right lower leg; sprain of cruciate ligament of right knee; adjustment reaction with adjustment disorder with depressed mood; and unspecified injury to right knee, leg, ankle, and foot. On February 26, 2010, Dr. Faheem recommended a 4% permanent partial disability award. On August 9, 2010, Dr. Riaz recommended a 10% permanent partial disability award. On March 25, 2011, Dr. Hasan recommended a total of a 6% permanent partial disability award requiring a 2% additional award over the 4% previously awarded by the claims administrator. 1 The Office of Judges affirmed the claims administrator's decision, and held that Mr. Sizemore was entitled to a 4% permanent partial disability award for psychiatric impairment. On appeal, Mr. Sizemore disagrees and asserts that the Office of Judges erred in focusing on the Global Assessment of Functioning score, which is

simply an estimate of the lowest level of functioning in the past week, and in finding that Dr. Faheen's report is more persuasive than Dr. Riaz's and Dr. Hasan's. The Office of Judges concluded that Dr. Faheen's recommendation, of a 4% impairment with a Global Assessment of Functioning of seventy, which is appropriate for mild symptoms, was persuasive and in accordance with West Virginia Code of State Rules § 85-20-Exhibit B

(2006). The Office of Judges determined that Dr. Riaz's recommendation of a 10% impairment with a Global Assessment of Functioning of fifty-five, which is appropriate for moderate symptoms, was unpersuasive because there was no showing that Mr. Sizemore suffered moderate symptoms due to the compensable injury on a permanent basis. Dr. Riaz noted that Mr. Sizemore had a panic attack after the compensable injury during 2007 and a suicide attempt two years prior, but the Office of Judges concluded that this did not establish a permanent pattern of these symptoms or justify a "moderate" Global Assessment of Functioning rating. The Office of Judges found that Dr. Hasan's recommendation, of a 6% impairment with a Global Assessment of Functioning of forty to forty-five, which is appropriate for serious symptoms, was unpersuasive because there is no showing of permanent, moderate, or serious symptoms on a permanent basis due to the occupational injury or other stressors. Ultimately, the Office of Judges granted a 4% permanent partial disability award in reliance on Dr. Faheen's report as the only persuasive report and in accordance with West Virginia Code of State Rules § 85-20 Exhibit B. The Board of Review reached the same reasoned conclusions in its decision of December 22, 2011. 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: October 4, 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