

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PRECEDENTIAL VALUE	nonprecedential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

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