

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Michael Davis v. Pegasus International Enterprise, Inc.

Davis v. Pegasus International Enterprise · No. No. 13-0306 (BOR Appeal No. 2047469) (Claim No. 2011009683) · Decided June 27, 2014

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the Workers' Compensation Board of Review's denial of Michael Davis's claim for benefits for a left shoulder labral tear allegedly sustained while making pizzas for Pegasus International Enterprise, Inc. The court held that the medical evidence was insufficient to establish that the injury occurred in the course of and resulted from his employment, and issued a memorandum decision under Rule 21.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; Chief Justice Robin J. Davis; Justice Brent D. Benjamin; Justice Margaret L. Workman; Justice Allen H. Loughry II; Justice Menis E. Ketchum
JURISDICTION	West Virginia
DECIDED	June 27, 2014
DOCKET	No. 13-0306 (BOR Appeal No. 2047469) (Claim No. 2011009683)
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner's appeal from the West Virginia Workers' Compensation Board of Review's affirmance of the Office of Judges' order affirming the claims administrator's rejection of his workers' compensation claim.
STANDARD OF REVIEW	The Board of Review's decision will not be disturbed unless it is in clear violation of a constitutional or statutory provision, clearly results from erroneous conclusions of law, or is based upon a material misstatement or mischaracterization of the evidentiary record.
PRECEDENTIAL VALUE	memorandum decision; no substantial question of law identified
PARTIES	Michael Davis v. Pegasus International Enterprise, Inc.

TOPICS

workers compensation

appellate procedure

standard of review

administrative law

PRACTICE AREAS

workers compensation

employment law

administrative law

QUESTIONS PRESENTED

1. Whether the evidence established that Davis's left-shoulder labral tear was an injury sustained in the course of and resulting from his employment.
2. Whether the Workers' Compensation Board of Review's affirmance of the denial of benefits was clearly erroneous under the applicable standard of review.

HOLDINGS

1. The evidence was insufficient to establish that Davis's left-shoulder labral tear occurred in the course of and resulted from his employment.
2. The Board of Review's decision 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

"Therefore, the decision of the Board of Review is affirmed." (at 2)

FACTUAL BACKGROUND

Davis alleged that he sustained a left-shoulder labral tear while making pizzas during his employment between January 1, 2010, and July 15, 2010. Dr. Steven O'Saile surgically repaired the tear on July 16, 2010, and Davis applied for workers' compensation benefits in August 2010. In deposition testimony, Dr. O'Saile could not determine when the tear occurred, stated that it might have occurred years earlier, and testified that Davis had not reported a specific injury or information establishing when the tear occurred. The record also showed chronic pain in both shoulders and contained no other medical opinion addressing causation.

PROCEDURAL HISTORY

The claims administrator rejected Davis's application for workers' compensation benefits on November 15, 2010, based on insufficient medical evidence and the absence of an apparent physical injury. The Workers' Compensation Office of Judges affirmed that decision on July 20, 2012, and the Board of Review affirmed on February 27, 2013. The Supreme Court of Appeals of West Virginia affirmed the Board's final order.

DISPOSITION

affirmed

OPINION

Michael Davis v. Pegasus International Enterprise

PER CURIAM.

STATE OF WEST VIRGINIA

FILED

SUPREME COURT OF APPEALS June 27, 2014

RORY L. PERRY II, CLERK

SUPREME COURT OF APPEALS

MICHAEL DAVIS, OF WEST VIRGINIA

Claimant Below, Petitioner vs.) No. 13-0306 (BOR Appeal No. 2047469) (Claim No. 2011009683)

PEGASUS INTERNATIONAL ENTERPRISE, INC.,

Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Michael Davis, by Gregory Prudich, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Pegasus International Enterprise, Inc., by James Harvey, its attorney, filed a timely response. This appeal arises from the Board of Review's Final Order dated February 27, 2013, in which the Board affirmed a July 20, 2012, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's November 15, 2010, decision rejecting Mr. Davis's claim for workers' compensation benefits. 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. Davis alleges that he sustained a labral tear in his left shoulder while making pizzas in the course of his employment sometime between January 1, 2010, and July 15, 2010. On July 16, 2010, Steven O'Saile, D.O., performed a left shoulder arthroscopy and repaired the labral tear. Mr. Davis filed an application for workers' compensation benefits in August of 2010. The claims administrator rejected the claim on November 15, 2010, citing insufficient medical evidence and a lack of an apparent physical injury. 1 On April 19, 2012, Dr. O'Saile testified in a deposition that he surgically repaired Mr. Davis's labral tear in July of 2010, but testified that he could not determine when the tear occurred, and indicated that it may have occurred years earlier. He further testified that Mr. Davis never reported any information indicative of when the tear may have occurred and never reported sustaining a specific injury. Dr. O'Saile then testified that any type of lifting or repetitive activity could be responsible for the torn labrum in Mr. Davis's left shoulder. In its Order affirming the claims administrator's November 15, 2010, decision, the Office of Judges

held that there is insufficient medical evidence contained in the record to support a finding of compensability. Mr. Davis disputes this finding and asserts that the evidence of record clearly shows that he sustained a labral tear in his left shoulder in the course of his employment. The Office of Judges found that the evidence of record demonstrates that Mr. Davis has experienced chronic pain in both shoulders. The Office of Judges further found that Dr. O'Saile, whose medical opinion is the only one of record addressing the issue in the instant claim, was unable to identify the cause of Mr. Davis's labral tear. The Office of Judges then concluded that the medical evidence of record does not support a finding that Mr. Davis was injured in the course of and resulting from his employment. The Board of Review reached the same reasoned conclusions in its decision of February 27, 2013. 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: June 27, 2014 CONCURRED IN BY: Chief Justice Robin J. Davis Justice Brent D. Benjamin Justice Margaret L. Workman Justice Allen H. Loughry II DISSENTING: Justice Menis E. Ketchum 2