

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Herbert Wendling v. Yellow Transportation, Inc.

Wendling · No. No. 11-0975 · Decided May 14, 2013

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed a Workers’ Compensation Board of Review decision denying the addition of right knee degenerative joint disease as a compensable component of Herbert Wendling’s workplace injury. The court held that the degenerative condition pre-existed the compensable injury and that the evidence did not support an additional permanent partial disability award.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; 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	May 14, 2013
DOCKET	No. 11-0975
DISPOSITION	affirmed
PROCEDURAL POSTURE	Herbert Wendling appealed the West Virginia Workers’ Compensation Board of Review’s affirmance of an Office of Judges order, which had affirmed the claims administrator’s denial of his request to add right knee degenerative joint disease as a compensable component of his injury.
STANDARD OF REVIEW	The Board of Review’s decision would be affirmed unless it was in clear violation of a constitutional or statutory provision, clearly the result of erroneous conclusions of law, or based on a material misstatement or mischaracterization of the evidentiary record; the Court also applied a clearly-wrong review to the Board’s affirmance of the Office of Judges’ factual findings.
PRECEDENTIAL VALUE	Published memorandum decision
PARTIES	Herbert Wendling v. Yellow Transportation, Inc.

TOPICS

workers compensation

administrative procedure act

standard of review

appellate procedure

PRACTICE AREAS

workers compensation

administrative law

appellate procedure

QUESTIONS PRESENTED

1. Whether the evidence supported adding right knee degenerative joint disease as a compensable component of Wendling's workers' compensation claim.
2. Whether the Workers' Compensation Board of Review was clearly wrong or otherwise acted unlawfully in affirming the denial of that request.

HOLDINGS

1. The preponderance of the evidence established that Wendling's right knee degenerative joint disease pre-existed the compensable injury and was not work-related; therefore, it was properly excluded from the claim.
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

"The preponderance of the evidence weighs in favor of finding that the additional 4% impairment recommended by Dr. Guberman for Mr. Wendling's degenerative joint disease pre-existed his compensable injury and was not work-related." (at 2)

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

FACTUAL BACKGROUND

Wendling, a truck driver for Yellow Transportation, injured his right knee on March 27, 2009, when his foot caught on steel while he was walking on a loading dock, causing him to twist the knee and strike it against a pipe. He received a 4% permanent partial impairment award for right knee strain and medial and lateral meniscal tears. He sought to add degenerative joint disease as a compensable component, but the claims administrator, Office of Judges, and Board of Review determined that the degenerative changes pre-existed the work injury and were not work-related.

PROCEDURAL HISTORY

The claims administrator granted Wendling a 4% permanent partial disability award for right knee strain and medial and lateral meniscal tears but denied his request to add degenerative joint disease as a compensable condition. The Workers' Compensation Office of Judges affirmed that decision, and the Board of Review

affirmed the Office of Judges on June 8, 2011. The Supreme Court of Appeals of West Virginia affirmed the Board's final order.

DISPOSITION

affirmed

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