

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Brian Caldwell v. Newtown Energy, Inc.

No. 13-0015 · No. No. 13-0015 · Decided June 10, 2014

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed a Workers’ Compensation Board of Review decision awarding Brian Caldwell 12% permanent partial disability for cervical and shoulder injuries sustained while working as an underground coal miner. The court held that the impairment rating was supported by the only medical evidence and was consistent with the applicable American Medical Association Guides and West Virginia regulations.

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 Menis E. Ketchum; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	June 10, 2014
DOCKET	No. 13-0015
DISPOSITION	affirmed
PROCEDURAL POSTURE	Claimant appealed the West Virginia Workers’ Compensation Board of Review’s affirmance of a 12% permanent partial disability award.
STANDARD OF REVIEW	The Board of Review’s decision was upheld unless it was in clear violation of a constitutional or statutory provision, clearly resulted from erroneous conclusions of law, or was based on a material misstatement or mischaracterization of the evidentiary record.
PRECEDENTIAL VALUE	Published memorandum decision; the opinion states that no substantial question of law was presented.
PARTIES	Brian Caldwell v. Newtown Energy, Inc.

TOPICS

- workers compensation
- appellate procedure
- administrative law
- standard of review
- remedies

PRACTICE AREAS

workers compensation

administrative law

appellate procedure

employment law

QUESTIONS PRESENTED

1. Whether Caldwell was entitled to an additional 2% permanent partial disability award for his cervical injury based solely on the impairment rating initially calculated under the American Medical Association's Guides to the Evaluation of Permanent Impairment.
2. Whether West Virginia Code of State Rules §§ 85-20-64.1, 85-20-64.2, and 85-20-E were invalid or conflicted with West Virginia Code § 23-4-6(i).

HOLDINGS

1. Caldwell was not entitled to a permanent partial disability award greater than 12% for his cervical and shoulder injuries because the only impairment evidence supported the 12% rating.
2. Caldwell failed to establish that West Virginia Code of State Rules §§ 85-20-64.1, 85-20-64.2, or 85-20-E were invalid or in conflict with West Virginia Code § 23-4-6(i).

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

Brian Caldwell, an underground coal miner, was struck by a falling rock on August 3, 2010. The claims administrator held the claim compensable for a concussion, neck sprain, head injury, and shoulder and upper-arm sprain. Dr. Paul Bachwitt assigned 8% impairment for Caldwell's cervical injury after adjusting his medical-guides rating to comply with West Virginia's impairment rules, and 4% for the shoulder injury, resulting in a combined 12% whole-person impairment rating.

PROCEDURAL HISTORY

The claims administrator granted Caldwell a 12% permanent partial disability award based on an independent medical evaluation. The Workers' Compensation Office of Judges affirmed that decision, and the Board of Review affirmed the Office of Judges. Caldwell appealed to the Supreme Court of Appeals of West Virginia, which affirmed the Board's final order.

DISPOSITION

affirmed

CASES CITED

- *Gore v. Insurance Commissioner of West Virginia*, No. 11-0612, 2013 WL 1286071, at *5 (Mar. 28, 2013)

