

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Michael A. Hicks v. Oilfield Trucking Solutions

Hicks · No. No. 15-1082 · Decided October 26, 2016

SUMMARY

The West Virginia Supreme Court of Appeals reviewed the denial of Michael A. Hicks's request to reopen his workers’ compensation claim for temporary total disability benefits. The court held that the Board of Review’s decision required remand for further analysis under West Virginia Code of State Rules § 85-1-5.2, particularly in light of evidence that Hicks returned to work and had a current employer. The decision was reversed and remanded in a memorandum decision.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Menis E. Ketchum; Justice Robin J. Davis; Justice Brent D. Benjamin; Justice Margaret L. Workman; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	October 26, 2016
DOCKET	No. 15-1082
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Michael A. Hicks appealed the West Virginia Workers’ Compensation Board of Review’s affirmance of an Office of Judges order upholding the claims administrator’s denial of his request to reopen his claim for temporary total disability benefits.
STANDARD OF REVIEW	The Court reviewed the Board of Review’s decision under the applicable workers’ compensation standard of review, but the opinion does not state the standard in specific terms.
PRECEDENTIAL VALUE	Published memorandum decision
PARTIES	Michael A. Hicks v. Oilfield Trucking Solutions

TOPICS

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

PRACTICE AREAS

workers compensation

administrative law

appellate procedure

employment law

QUESTIONS PRESENTED

1. Whether the denial of Hicks's request to reopen his claim for temporary total disability benefits was proper under West Virginia Code of State Rules § 85-1-5.2.
2. Whether the Office of Judges and Board of Review adequately considered Hicks's return to work and the existence of a current employer when determining whether the retirement-disqualification rule applied.

HOLDINGS

1. The Board of Review's decision could not stand because the Office of Judges did not fully analyze the impact of West Virginia Code of State Rules § 85-1-5.2 on Hicks's eligibility for temporary total disability benefits, including his return to work and current employer.

KEY QUOTATIONS

"If an individual retires, as long as the individual remains retired, he or she is disqualified from receiving temporary total disability indemnity benefits as a result of an injury received from the place of employment from which he or she retired, unless the application for benefits was received prior to his or her retirement."

(2)

"Because the Office of Judges did not discuss these factors pursuant to West Virginia Code of State Rules § 85-1-5.2, the case has not been fully considered." (2)

FACTUAL BACKGROUND

Hicks, a water truck driver, felt a sharp pull in his abdomen while maneuvering a hose on July 4, 2012, and was later diagnosed with an umbilical hernia. His claim was held compensable, but he continued working and later reported that he had retired and begun receiving Social Security retirement benefits on August 1, 2012. After surgery was authorized and performed in September 2014, Hicks sought temporary total disability benefits for periods before and after his alleged retirement, asserting that he had been forced to retire because of the compensable injury.

PROCEDURAL HISTORY

The claims administrator denied Hicks's request for temporary total disability benefits, determining that he had retired from his employment. The Workers' Compensation Office of Judges affirmed the denial, and the Board of Review affirmed the Office of Judges. The Supreme Court of Appeals of West Virginia found that the Board's decision violated a statutory provision because the Office of Judges had not fully analyzed the effect of West Virginia Code of State Rules § 85-1-5.2, and remanded the claim for further analysis.

DISPOSITION

REMAND INSTRUCTIONS

Remand to the Office of Judges to issue a decision that fully examines the impact of West Virginia Code of State Rules § 85-1-5.2, including Hicks's return to work and indication of a current employer.

OPINION

PER CURIAM.

STATE OF WEST VIRGINIA SUPREME COURT OF APPEALS FILED October 26, 2016
RORY L. PERRY II, CLERK MICHAEL A. HICKS, SUPREME COURT OF APPEALS
Claimant Below, Petitioner OF WEST VIRGINIA vs.) No. 15-1082 (BOR Appeal No. 2050380)
(Claim No. 2013004203) OILFIELD TRUCKING SOLUTIONS, Employer Below, Respondent
MEMORANDUM DECISION Petitioner Michael A. Hicks, by Robert L. Stultz, his attorney,
appeals the decision of the West Virginia Workers' Compensation Board of Review.

Oilfield Trucking Solutions, by Matthew L. Williams, its attorney, filed a timely response This
appeal arises from the Board of Review's Final Order dated October 14, 2015, in which the Board
affirmed a March 31, 2015, Order of the Workers' Compensation Office of Judges.

In its Order, the Office of Judges affirmed the claims administrator's October 24, 2014, decision to
deny the request to reopen the claim for temporary total disability 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 that the Board of Review's decision is in clear violation of a
statutory provision. This case satisfies the "limited circumstances" requirement of Rule 21(d) of
the Rules of Appellate Procedure and is appropriate for a memorandum decision rather than an
opinion.

Mr. Hicks, a water truck driver for Oilfield Trucking Solutions, was maneuvering a hose on July 4,
2012, when he felt a sharp pull in his abdomen. It was later discovered that he developed an
umbilical hernia. He applied for benefits and his claim was held compensable by the claims
administrator for an umbilical hernia on August 30, 2012.

The claims administrator determined that Mr. Hicks was ineligible for temporary total disability
benefits because he did not initially introduce sufficient evidence showing he was unable to work.
1 Mr. Hicks was primarily treated by Ronald Pearson, M.D., for his hernia and initially was not a

candidate for surgery. Mr. Hicks also had consultations with Marc Costa, M.D., and Kessa D. Thorpe, PA-C.

Ms. Thorpe stated that Mr. Hicks did not ask for temporary total disability benefits and had worked since the day of his injury. She noted that the only day of work he missed was the date he was initially examined. On December 6, 2012, office notes from Ms. Thorpe showed that she examined Mr. Hicks for non-work-related conditions. Mr. Hicks advised her that he had reinjured his stomach several times from wrestling cattle.

Ms. Thorpe advised him to decrease the amount of lifting, pulling on cattle, and moving bales of hay. Eventually, it became apparent that Mr. Hicks required surgery. On July 21, 2014, the claims administrator granted the request for surgery.

On September 2, 2014, Mr. Hicks requested that he be granted temporary total disability benefits from August 1, 2012, through April 1, 2013, and from June 15, 2013, until January 15, 2015. Then on September 5, 2014, Mr. Hicks underwent a successful surgery.

The claims administrator denied Mr. Hicks's request for temporary total disability benefits because it determined that he retired from his job. The Office of Judges determined that the claims administrator properly denied temporary total disability benefits for the periods of August 1, 2012, through April 1, 2013, and from June 15, 2013, through January 15, 2015.

The Office of Judges addressed Mr. Hicks's assertion that he was forced to retire because of the compensable injury. The Office of Judges found that Mr. Hicks indicated in his reopening application dated September 2, 2014, that he retired and began receiving retirement Social Security benefits on August 1, 2012.

The Office of Judges cited to West Virginia Code of State Rules § 85-1-5.2 (2009) which provides: If an individual retires, as long as the individual remains retired, he or she is disqualified from receiving temporary total disability indemnity benefits as a result of an injury received from the place of employment from which he or she retired, unless the application for benefits was received prior to his or her retirement.

The Office of Judges found that although Mr. Hicks now states in his latest application dated September 2, 2014, that he was forced to retire, there was no such allegation in a previous application dated December 29, 2012.

The Office of Judges also noted that the December 29, 2012, application was submitted several months after he had retired. The Office of Judges found that the assertion of a forced retirement, which was made more than two years after his retirement, was not persuasive.

The Board of Review adopted the findings of the Office of Judges and affirmed its Order. After review, we find that the decision should be remanded to the Office of Judges for further analysis

under West Virginia Code of State Rules § 85-1-5.2. Mr. Hicks testified that he returned to work on April 19, 2013, and his claim reopening application indicated that he had a current employer.

Because the Office of Judges did not discuss these factors pursuant to West Virginia Code of State Rules § 85-1-5.2, the case has not been fully considered. 2 For the foregoing reasons, we find that the decision of the Board of Review is in clear violation of a statutory provision.

Therefore, the claim is remanded with instructions to issue a decision that fully examines the impact of West Virginia Code of State Rules § 85-1-5.2. Reversed and Remanded. ISSUED: October 26, 2016 CONCURRED IN BY: Chief Justice Menis E. Ketchum Justice Robin J. Davis Justice Brent D. Benjamin Justice Margaret L. Workman Justice Allen H. Loughry II 3