

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Keith L. Ketterman v. West Virginia Division of Highways

Ketterman · No. No. 21-0429 · Decided September 19, 2022

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the denial of Keith L. Ketterman’s workers’ compensation claim for a left shoulder rotator cuff tear allegedly caused by repetitive work activities. The court held that the record did not establish that the condition resulted from his employment and found no substantial question of law or prejudicial error.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice John A. Hutchison; Justice Elizabeth D. Walker; Justice Tim Armstead; Justice William R. Wooton; Justice C. Haley Bunn
JURISDICTION	West Virginia
DECIDED	September 19, 2022
DOCKET	No. 21-0429
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner appealed the West Virginia Workers’ Compensation Board of Review’s affirmance of the denial of his workers’ compensation claim.
STANDARD OF REVIEW	Under W. Va. Code § 23-5-15, the court gives deference to the Board of Review’s findings, reasoning, and conclusions. When the Board affirms prior rulings by the commission and Office of Judges on the same issue, reversal or modification is permitted only for a clear constitutional or statutory violation, erroneous legal conclusions, or material misstatement or mischaracterization of the evidentiary record; the court may not conduct a de novo reweighing of the evidence. Questions of law are reviewed de novo.
PRECEDENTIAL VALUE	Unpublished memorandum decision; nonprecedential value not otherwise specified in the source.
PARTIES	Keith L. Ketterman v. West Virginia Division of Highways

TOPICS

workers compensation

administrative law

judicial review of agency action

standard of review

appellate procedure

PRACTICE AREAS

workers compensation

employment law

administrative law

QUESTIONS PRESENTED

1. Whether Kettermann established that his left shoulder rotator cuff condition was a compensable personal injury received in the course of and resulting from his employment.
2. Whether the Board of Review's affirmance of the denial of compensability was supported under the applicable deferential standard of review.

HOLDINGS

1. The claim was not compensable because Kettermann failed to present sufficient evidence that his left shoulder rotator cuff tear resulted from his work duties.
2. The court was required to defer to the Board of Review's findings and could not conduct a de novo reweighing of the evidence; questions of law were reviewed de novo.

KEY QUOTATIONS

“The court may not conduct a de novo reweighing of the evidentiary record” (at 1)

“For an injury to be compensable it must be a personal injury that was received in the course of employment, and it must have resulted from that employment.” (at 3)

FACTUAL BACKGROUND

Kettermann alleged that repetitive work duties caused a left shoulder rotator cuff injury beginning around November 12, 2019. Medical records and an MRI documented a left shoulder tear, but Kettermann initially attributed his gradual-onset pain to arthritis, continued working, and did not promptly report the condition. The record contained no physician attribution of the shoulder condition to his employment, and the claims administrator denied compensability.

PROCEDURAL HISTORY

The claims administrator rejected Kettermann's claim on February 6, 2020. The Office of Judges affirmed the rejection on November 13, 2020, and the Board of Review affirmed the Office of Judges on April 22, 2021. The Supreme Court of Appeals reviewed the Board's decision and affirmed.

DISPOSITION

affirmed

CASES CITED

- Hammons v. W. Va. Off. of Ins. Comm'r, 235 W. Va. 577, 582-83, 775 S.E.2d 458, 463-64 (2015)
- Justice v. West Virginia Office Insurance Commission, 230 W. Va. 80, 83, 736 S.E.2d 80, 83 (2012)
- Davies v. W. Va. Off. of Ins. Comm'r, 227 W. Va. 330, 334, 708 S.E.2d 524, 528 (2011)
- Barnett v. State Workmen's Comp. Comm'r, 153 W. Va. 796, 172 S.E.2d 698 (1970)

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