

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Clestene A. Hines-Davidson v. Wheeling Hospital, Inc.

No. 13-0804 (W. Va. Sept. 18, 2014) · No. No. 13-0804 (BOR Appeal No. 2047962) (Claim No. 2011020131) ·
Decided September 18, 2014

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed a Workers' Compensation Board of Review decision awarding Clestene A. Hines-Davidson 4% permanent partial disability for a compensable left-knee injury. The court held that the claimant did not establish entitlement to a greater award because the physician supporting a 14% impairment finding determined that she had not reached maximum medical improvement, making that impairment assessment unreliable. The court issued the decision as a memorandum decision under Rule 21 of the West Virginia Rules of Appellate Procedure.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	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	September 18, 2014
DOCKET	No. 13-0804 (BOR Appeal No. 2047962) (Claim No. 2011020131)
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner's appeal from the West Virginia Workers' Compensation Board of Review's final order affirming a decision awarding her 4% permanent partial disability.
STANDARD OF REVIEW	The Court affirmed unless the Board of Review's decision was in clear violation of a constitutional or statutory provision, clearly resulted from erroneous conclusions of law, or was based upon a material misstatement or mischaracterization of the evidentiary record.
PRECEDENTIAL VALUE	unpublished memorandum decision
PARTIES	Clestene A. Hines-Davidson v. Wheeling Hospital, Inc.

TOPICS

workers compensation

administrative law

appellate procedure

standard of review

employment law

PRACTICE AREAS

workers compensation

administrative law

appellate procedure

QUESTIONS PRESENTED

1. Whether Hines-Davidson was entitled to more than a 4% permanent partial disability award for her compensable left-knee injury.
2. Whether the Board of Review's decision affirming the 4% award violated a constitutional or statutory provision, resulted from an erroneous conclusion of law, or rested on a material misstatement or mischaracterization of the evidentiary record.

HOLDINGS

1. Hines-Davidson failed to establish entitlement to an award greater than 4% permanent partial disability.
2. The Board of Review's decision was not in clear violation of a constitutional or statutory provision, was not clearly the result of an erroneous conclusion of law, and was not based on a material misstatement or mischaracterization of the evidentiary record; therefore, the decision was affirmed.

KEY QUOTATIONS

"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." (2)

FACTUAL BACKGROUND

Hines-Davidson injured her left knee on November 23, 2010, while assisting a patient, and the injury was held compensable. Dr. Sushil Sethi and treating provider Heather Gibbons concluded in August 2011 that she had reached maximum medical improvement, and Dr. Sethi assessed 4% whole person impairment. Dr. James Dauphin later concluded that she had not reached maximum medical improvement but alternatively assessed 14% impairment if maximum medical improvement had been reached. The tribunals below rejected Dauphin's opinion as unreliable and upheld the 4% award.

PROCEDURAL HISTORY

The claims administrator granted Hines-Davidson a 4% 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. The Supreme Court of Appeals reviewed the Board's final order and affirmed.

DISPOSITION

affirmed

OPINION

PER CURIAM.

STATE OF WEST VIRGINIA FILED SUPREME COURT OF APPEALS September 18, 2014
RORY L. PERRY II, CLERK SUPREME COURT OF APPEALS CLESTENE A. HINES-
DAVIDSON, OF WEST VIRGINIA Claimant Below, Petitioner vs.) No. 13-0804 (BOR Appeal
No. 2047962) (Claim No. 2011020131) WHEELING HOSPITAL, INC., Employer Below,
Respondent MEMORANDUM DECISION Petitioner Clestene A. Hines-Davidson, by Jonathan
Bowman, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of
Review.

Wheeling Hospital, Inc., by Jennifer Hagedorn, its attorney, filed a timely response. This appeal
arises from the Board of Review's Final Order dated July 5, 2013, in which the Board affirmed a
December 4, 2012, Order of the Workers' Compensation Office of Judges.

In its Order, the Office of Judges affirmed the claims administrator's August 12, 2011, decision
granting Ms. Hines-Davidson a 4% permanent partial disability award. 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. Ms. Hines-Davidson injured her left knee on November 23, 2010, while assisting a
patient and the claim was subsequently held compensable. Following the injury, she treated with
Heather Gibbons, FNP-BC, and E. Fritz Braunlich, M.D., both of whom recommended that Ms.
Hines-Davidson undergo physical therapy.

Additionally, Dr. Braunlich treated Ms. Hines Davidson's left knee with steroid injections. On
August 1, 2011, Sushil Sethi, M.D., performed an independent medical evaluation. He determined
that Ms. Hines-Davidson had reached maximum medical improvement after reaching a treatment
plateau. Dr. Sethi opined that Ms. 1 Hines-Davidson sustained 4% whole person impairment as a
result of range of motion abnormalities in the left knee.

Ms. Gibbons re-examined Ms. Hines-Davidson on August 10, 2011, and also concluded that she
had reached maximum medical improvement and released her from treatment for the occupational

injury. The claims administrator granted Ms. Hines-Davidson a 4% permanent partial disability award based on Dr. Sethi's independent medical evaluation on August 12, 2011.

On March 24, 2012, James Dauphin, M.D., performed an independent medical evaluation. He determined that Ms. Hines-Davidson had not reached maximum medical improvement. However, he provided an opinion regarding the amount of Ms. Hines-Davidson's permanent impairment resulting from her compensable injuries. He opined that if Ms. Hines-Davidson is deemed to have reached maximum medical improvement, she has 14% whole person impairment as a result of range of motion deficits in the left knee.

In its Order affirming the August 12, 2011, claims administrator's decision, the Office of Judges held that Ms. Hines-Davidson failed to demonstrate that she is entitled to more than a 4% permanent partial disability award. Ms. Hines-Davidson disputes this finding and asserts, per the opinion of Dr. Dauphin, that she is entitled to an additional 10% permanent partial disability award, for a total award of 14%.

The Office of Judges found that Dr. Dauphin's report cannot be considered reliable in light of the entirety of the medical evidence of record. The Office of Judges noted that Dr. Dauphin found that Ms. Hines-Davidson has not reached maximum medical improvement, and determined that this finding is not consistent with the weight of the medical evidence of record, particularly when considering that Dr. Sethi and Ms. Gibbons determined that Ms. Hines-Davidson had reached maximum medical improvement in August of 2011.

Additionally, the Office of Judges found that Dr. Dauphin's own findings lack consistency. The Office of Judges noted that despite finding that Ms. Hines-Davidson had not reached maximum medical improvement, he calculated the amount of her permanent impairment resulting from the compensable injury.

As noted by the Office of Judges, the American Medical Association's Guides to the Evaluation of Permanent Impairment (4th ed. 1993) require that a claimant have reached maximum medical improvement with regard to a given injury before a determination of permanent impairment can be made.

In accordance with the American Medical Association's Guides, Dr. Dauphin should not have assessed the amount of Ms. Hines-Davidson's whole person impairment after concluding that she had not reached maximum medical improvement.

The Office of Judges therefore concluded that if Dr. Dauphin believed that Ms. Hines-Davidson had not reached maximum medical improvement, his opinion cannot be considered an accurate or reliable assessment of the amount of her permanent impairment.

The Board of Review affirmed the reasoning and conclusions of the Office of Judges in its decision of July 5, 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. 2 Affirmed. ISSUED: September 18, 2014 CONCURRED IN BY: Chief Justice Robin J. Davis Justice Brent D. Benjamin Justice Margaret L. Workman Justice Menis E. Ketchum Justice Allen H. Loughry II 3