

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Galaxy Distributing of WV, Inc. v. Lewis D. Spangler

Galaxy Distributing · No. No. 19-0803 · Decided November 6, 2020

SUMMARY

The West Virginia Supreme Court of Appeals affirmed a decision awarding Lewis D. Spangler 23% permanent partial disability benefits for a compensable right shoulder injury. The court held that the employer failed to establish a definitely ascertainable preexisting impairment under West Virginia Code § 23-4-9b sufficient to support apportionment of impairment. The court issued the opinion as a per curiam memorandum decision under Rule 21.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per curiam; Chief Justice Tim Armstead; Justice Margaret L. Workman; Justice Elizabeth D. Walker; Justice Evan H. Jenkins; Justice John A. Hutchison
JURISDICTION	West Virginia
DECIDED	November 6, 2020
DOCKET	No. 19-0803
DISPOSITION	affirmed
PROCEDURAL POSTURE	Employer appealed the West Virginia Workers' Compensation Board of Review's decision granting the claimant a 23% permanent partial disability award.
STANDARD OF REVIEW	The court would affirm unless the Board of Review's decision was in clear violation of a constitutional or statutory provision, clearly the result of erroneous conclusions of law, or clearly wrong based on the evidentiary record such that, even resolving all inferences in favor of the Board's findings, reasoning, and conclusions, the decision lacked sufficient support.
PRECEDENTIAL VALUE	Unpublished memorandum decision; limited precedential value under West Virginia appellate practice.
PARTIES	Galaxy Distributing of WV, Inc. v. Lewis D. Spangler

TOPICS

workers compensation

administrative law

appellate procedure

statutory interpretation

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PRACTICE AREAS

workers compensation

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QUESTIONS PRESENTED

1. Whether the Board of Review properly rejected the apportionment of 11% impairment to preexisting arthrosis under West Virginia Code § 23-4-9b.
2. Whether the evidence supported a 23% permanent partial disability award rather than the 12% award granted by the claims administrator.

HOLDINGS

1. Apportionment was improper because the record did not establish that Spangler had a definitely ascertainable preexisting impairment before the compensable injury.
2. The Board of Review's decision granting a 23% permanent partial disability award was supported by the record and was not clearly erroneous.

KEY QUOTATIONS

"In this case, the Board of Review was correct to find that there is no evidence of record indicating that Mr. Spangler had impairment prior to the compensable injury." (3)

"The Board of Review was correct to find Dr. Mukkamala's apportionment to be incorrect." (3)

FACTUAL BACKGROUND

Lewis D. Spangler, a truck driver, injured his right shoulder and hand in a work-related motor vehicle accident. The claim was held compensable for a right shoulder sprain and right hand laceration, and he later underwent reverse total shoulder arthroplasty. Dr. Mukkamala assessed 23% whole-person impairment but apportioned 11% to preexisting arthrosis, resulting in a recommended 12% award; however, lay statements indicated that Spangler had full use of his shoulder and no work or daily-activity limitations before the accident.

PROCEDURAL HISTORY

The claims administrator granted a 12% permanent partial disability award. The Office of Judges affirmed that decision, but the Board of Review reversed and granted a 23% award. The Supreme Court of Appeals affirmed the Board of Review.

DISPOSITION

affirmed

CASES CITED

- Minor v. West Virginia Division of Motor Vehicles, No. 17-0077, 2017 WL 6503113 (W. Va. Dec. 19, 2017) (memorandum decision)

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