

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Thomas E. Wilson Sr. v. W. Va. Office of Insurance Commissioner/CGM Contractors, Inc.

Wilson · No. No. 13-0208 (BOR Appeal No. 2047560) (Claim No. 900050980) · Decided June 27, 2014

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the Workers' Compensation Board of Review's denial of Thomas E. Wilson Sr.'s request for a referral to a pain specialist. The court held that the record failed to demonstrate a causal connection between the requested referral and Wilson's compensable 1990 workplace injury.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Robin J. Davis; Justice Menis E. Ketchum; Justice Allen H. Loughry II; Justice Brent D. Benjamin; Justice Margaret L. Workman
JURISDICTION	West Virginia
DECIDED	June 27, 2014
DOCKET	No. 13-0208 (BOR Appeal No. 2047560) (Claim No. 900050980)
DISPOSITION	affirmed
PROCEDURAL POSTURE	Thomas E. Wilson Sr. appealed the West Virginia Workers' Compensation Board of Review's final order affirming denial of a referral to a pain specialist.
STANDARD OF REVIEW	The court reviewed whether 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 based upon a material misstatement or mischaracterization of the evidentiary record.
PRECEDENTIAL VALUE	Unpublished memorandum decision; nonprecedential value not otherwise specified in the source.
PARTIES	Thomas E. Wilson Sr. v. West Virginia Office of Insurance Commissioner, CGM Contractors, Inc.

TOPICS

workers compensation

administrative law

appellate procedure

standard of review

PRACTICE AREAS

workers compensation

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QUESTIONS PRESENTED

1. Whether the Workers' Compensation Board of Review properly affirmed denial of authorization for a referral to a pain specialist.
2. Whether the evidentiary record established a causal connection between Wilson's current symptoms and the compensable 1990 injury.
3. Whether the Board of Review's decision violated a constitutional or statutory provision, resulted from erroneous conclusions of law, or rested on a material misstatement or mischaracterization of the evidence.

HOLDINGS

1. The denial of the referral was proper because the evidentiary record failed to demonstrate a causal connection between the requested referral and the compensable injury.
2. The Board of Review's decision was not in clear violation of a constitutional or statutory provision, was not clearly the result of erroneous conclusions of law, and was not based upon a material misstatement or mischaracterization of the evidentiary record.

KEY QUOTATIONS

"The evidentiary record fails to demonstrate a causal connection between the request for a referral to a pain specialist and the compensable injury." (at 2)

"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." (at 2)

FACTUAL BACKGROUND

Wilson sustained a compensable back injury in 1990 while working as a heavy equipment operator, resulting in a herniated disc and surgery. Years later, he continued to report chronic lumbar pain and was taking pain medication. His treating physician requested authorization for a referral to a pain specialist, but the claims administrator denied the request; the medical evidence included an evaluation opining that Wilson had recovered from the compensable injury and a 2011 MRI showing degenerative changes without re-herniation, disc bulging, protrusion, or extrusion.

PROCEDURAL HISTORY

The claims administrator denied the requested referral on April 11, 2012. The Workers' Compensation Office of Judges affirmed that decision on July 31, 2012, and the Workers' Compensation Board of Review affirmed the

Office of Judges on January 30, 2013. The Supreme Court of Appeals of West Virginia affirmed the Board of Review in a memorandum decision.

DISPOSITION

affirmed

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