

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Pearl Vincent, Widow of Fonzo Vincent v. West Virginia Office of Insurance Commissioner and Upshur Coals Corporation

Vincent · No. No. 16-0083 (BOR Appeal No. 2050670) (Claim No. 870040009) · Decided November 29, 2016

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the denial of Pearl Vincent’s claim for dependent’s workers’ compensation benefits following her husband’s death from chronic obstructive pulmonary disease. The court agreed that the evidentiary record, including the Occupational Pneumoconiosis Board’s opinion, did not establish that occupational pneumoconiosis was a material contributing factor in his death.

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	November 29, 2016
DOCKET	No. 16-0083 (BOR Appeal No. 2050670) (Claim No. 870040009)
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the West Virginia Workers' Compensation Board of Review's affirmance of an order denying dependent's workers' compensation benefits.
STANDARD OF REVIEW	The court reviewed the Board of Review's decision to determine whether it violated a constitutional or statutory provision, resulted from erroneous conclusions of law, or was based on a material misstatement or mischaracterization of the evidentiary record.
PRECEDENTIAL VALUE	Unpublished memorandum decision; limited precedential value.
PARTIES	Pearl Vincent, widow of Fonzo Vincent v. West Virginia Office of Insurance Commissioner, Upshur Coals Corporation

TOPICS

workers compensation

administrative law

appellate procedure

standard of review

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the Board of Review erred in affirming the denial of dependent's workers' compensation benefits.
2. Whether the evidence established that occupational pneumoconiosis was a material contributing factor in Fonzo Vincent's death.
3. Whether the Board of Review's decision 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. The denial of dependent's benefits was proper because the evidentiary record did not establish that occupational pneumoconiosis was a material contributing factor in Fonzo Vincent's death.
2. The Board of Review's decision was not clearly erroneous and did not violate a constitutional or statutory provision, result from an erroneous conclusion of law, or rest on a material misstatement or mischaracterization of the evidentiary record.

KEY QUOTATIONS

“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 3)

FACTUAL BACKGROUND

Fonzo Vincent worked as a coal miner for approximately forty years and had previously received a 25% permanent partial disability award for occupational pneumoconiosis. He suffered from severe chronic obstructive pulmonary disease, emphysema, respiratory illnesses, and a substantial history of tobacco use, and died on May 26, 2013, with chronic obstructive pulmonary disease listed as the cause of death. His widow sought dependent's benefits, but the Occupational Pneumoconiosis Board concluded that occupational pneumoconiosis was not a material contributing factor in his death and attributed the respiratory death primarily to smoking-related disease.

PROCEDURAL HISTORY

Pearl Vincent applied for dependent's benefits after the death of her husband, Fonzo Vincent, alleging that occupational injury caused or materially contributed to his death. The claims administrator denied the application, the Workers' Compensation Office of Judges affirmed the denial, and the Workers' Compensation

Board of Review affirmed the Office of Judges. The Supreme Court of Appeals of West Virginia affirmed the Board of Review.

DISPOSITION

affirmed

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