

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Harold D. Jordan v. Spartan Mining Company

No. 16-1198 (W. Va. Aug. 24, 2017) (memorandum decision) · No. No. 16-1198; BOR Appeal No. 2051421; Claim No. 2014001955 · Decided August 24, 2017

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the denial of Harold D. Jordan's request for a permanent partial disability award arising from a compensable lower-back injury. The court agreed that the medical evidence supported a 0% impairment rating attributable to the work injury because the impairment was attributable to pre-existing lumbar spine conditions.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Allen H. Loughry II; Justice Robin J. Davis; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Elizabeth D. Walker
JURISDICTION	West Virginia
DECIDED	August 24, 2017
DOCKET	No. 16-1198; BOR Appeal No. 2051421; Claim No. 2014001955
DISPOSITION	affirmed
PROCEDURAL POSTURE	Claimant appealed the West Virginia Workers’ Compensation Board of Review’s affirmance of a decision denying him a permanent partial disability award.
STANDARD OF REVIEW	The court determined 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 on a material misstatement or mischaracterization of the evidentiary record.
PRECEDENTIAL VALUE	unpublished memorandum decision
PARTIES	Harold D. Jordan v. Spartan Mining Company

TOPICS

- workers compensation
- administrative law
- standard of review
- appellate procedure

PRACTICE AREAS

workers compensation

administrative law

appellate procedure

QUESTIONS PRESENTED

1. Whether Jordan was entitled to a permanent partial disability award for the compensable July 1, 2013, lower-back injury.
2. Whether the Board of Review's decision affirming a 0% permanent partial disability award was clearly erroneous or based on a material misstatement or mischaracterization of the evidentiary record.

HOLDINGS

1. Jordan failed to establish that the compensable July 1, 2013, injury caused a compensable whole person impairment warranting a permanent partial disability award.
2. The Board of Review's decision must be affirmed where it is not in clear violation of a constitutional or statutory provision, is not clearly the result of erroneous conclusions of law, and is not based on a material misstatement or mischaracterization of the evidentiary record.

KEY QUOTATIONS

"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." (at 1)

"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

Jordan injured his lower back while maneuvering a cable during his employment with Spartan Mining Company on July 1, 2013. The claim was held compensable for a lumbosacral joint ligament sprain, but medical evidence also documented significant pre-existing lumbar degenerative disease and a 1997 L5-S1 microdiscectomy. Three independent medical evaluations assigned different impairment ratings, with Dr. Mukkamala attributing the entire measured impairment to the pre-existing condition and concluding that the compensable injury caused 0% whole person impairment.

PROCEDURAL HISTORY

The claims administrator granted Jordan a 0% permanent partial disability award on January 20, 2015. The Office of Judges affirmed on July 8, 2016, and the Board of Review affirmed the Office of Judges on November 21, 2016. Jordan appealed to the Supreme Court of Appeals of West Virginia, which affirmed the Board's decision.

DISPOSITION

affirmed

CASES CITED

- Harold D. Jordan v. Spartan Mining Company, No. 16-1019 (W. Va. Aug. 2, 2017) (memorandum decision)

OPINION

PER CURIAM.

STATE OF WEST VIRGINIA SUPREME COURT OF APPEALS FILED August 24, 2017
HAROLD D. JORDAN, RORY L. PERRY II, CLERK Claimant Below, Petitioner SUPREME
COURT OF APPEALS OF WEST VIRGINIA vs.) No. 16-1198 (BOR Appeal No. 2051421)
(Claim No. 2014001955) SPARTAN MINING COMPANY, Employer Below, Respondent
MEMORANDUM DECISION Petitioner Harold D. Jordan, by Reginald Henry, his attorney,
appeals the decision of the West Virginia Workers' Compensation Board of Review.

Spartan Mining Company, by Timothy Huffman, its attorney, filed a timely response. The issue presented in the instant appeal is Mr. Jordan's request for a permanent partial disability award. On January 20, 2015, the claims administrator granted Mr. Jordan a 0% permanent partial disability award.

The Office of Judges affirmed the claims administrator's decision on July 8, 2016. This appeal arises from the Board of Review's Final Order dated November 21, 2016, in which the Board affirmed the Order of the Workers' Compensation Office of Judges.

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. Mr. Jordan injured his lower back while maneuvering a cable on July 1, 2013, during the course of his employment with Spartan Mining Company. He initially sought treatment in Welch Community Hospital's emergency department for ongoing lower back pain on July 15, 2013.

X- rays were performed and revealed degenerative disc disease and facet disease, and Mr. Jordan was diagnosed with an acute myofascial strain and lower back pain. A subsequent lumbar spine 1 MRI revealed degenerative disc disease and facet arthropathy.

On July 30, 2013, the claim was held compensable for a lumbosacral joint ligament sprain.¹ Mr. Jordan underwent three independent medical evaluations for the purpose of determining the amount of whole person impairment arising from the compensable injury. Joseph Grady, M.D.,

performed an independent medical evaluation on January 13, 2015, and authored a report memorializing his findings on the same date.

Dr. Grady noted that Mr. Jordan's lumbar flexion and extension measurements did not satisfy the validity criteria. Additionally, he found no objective evidence of radiculopathy. Dr. Grady determined that Mr. Jordan did not exhibit any abnormalities in range of motion and opined that Mr. Jordan sustained 0% whole person impairment as a result of the July 1, 2013, injury.

The claims administrator granted Mr. Jordan a 0% permanent partial disability award on January 20, 2015. Robert Walker, M.D., performed an independent medical evaluation on July 31, 2015, and authored a report memorializing his findings on the same date. Dr. Walker noted that he obtained valid range of motion measurements and, after applying West Virginia Code of State Rules § 85-20-Table C (2006), opined that Mr. Jordan sustained 8% whole person impairment as a result of range of motion abnormalities in the lumbar spine.

He did not apportion any percentage of the whole person impairment rating to the well-documented pre-existing condition affecting the lumbar spine. Finally, Prasadarao Mukkamala, M.D., performed an independent medical evaluation on February 3, 2016, and authored a report memorializing his findings on February 8, 2016. Dr. Mukkamala opined that Mr. Jordan's ongoing symptoms are attributable to non-compensable degenerative spondyloarthropathy.

He also noted that he obtained valid range of motion measurements and, after applying the West Virginia Code of State Rules § 85-20-Table C, opined that Mr. Jordan has 13% whole person impairment attributable to range of motion deficits in the lumbar spine and an L5-S1 microdiscectomy performed in 1997. Dr. Mukkamala then opined that the entirety of the 13% whole person impairment is attributable to the significant pre existing lumbar spine condition which required surgery in 1997.

Therefore, he concluded that Mr. Jordan sustained 0% whole person impairment as a result of the July 1, 2013, injury. In its Order affirming the January 20, 2015, claims administrator's decision, the Office of Judges held that Mr. Jordan failed to establish that he is entitled to a permanent partial disability award for the July 1, 2013, injury.

The Board of Review affirmed the reasoning and conclusions of the Office of Judges in its decision dated November 21, 2016. On appeal, Mr. Jordan asserts, per the opinion of Dr. Walker, that he is entitled to an 8% permanent partial disability award for the July 1, 2013, injury.

The Office of Judges found that the conclusions expressed in Dr. Mukkamala's report represent the most accurate calculation of the amount of Mr. Jordan's whole person impairment 1 In *Harold D. Jordan v. Spartan Mining Company*, No. 16-1019 (W.Va. Supreme Court, August 2, 2017) (memorandum decision), we affirmed the denial of a request to add an annular tear and radiculopathy as compensable diagnoses.

2 arising from the July 1, 2013, injury.² The Office of Judges then found that Dr. Grady's calculations are unreliable because he failed to produce valid range of motion measurements. Finally, the Office of Judges found that Dr. Walker failed to acknowledge the occurrence of the 1997 discectomy and, likewise, failed to apportion for pre-existing impairment attributable to the procedure.

We agree with the reasoning and conclusions of the Office of Judges, as affirmed by the Board of Review. ² In the Discussion portion of its July 8, 2016, decision, the Office of Judges mistakenly stated that Dr. Mukkamala attributed 13% whole person impairment to the July 1, 2013, injury.

The Findings of Fact and the resulting decision correctly reflect Dr. Mukkamala's opinion that Mr. Jordan has 0% whole person impairment attributable to the July 1, 2013, injury. ³ 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. Affirmed. ISSUED: August 24, 2017
CONCURRED IN BY: Chief Justice Allen H. Loughry II Justice Robin J. Davis Justice Margaret L. Workman Justice Menis E. Ketchum Justice Elizabeth D. Walker ⁴