

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Ricky Meadows v. Kingston Mining, Inc.

Meadows v. Kingston Mining · No. No. 12-0064 · Decided October 4, 2013

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the Workers’ Compensation Board of Review’s decision awarding Ricky Meadows a 15% permanent partial disability rating for his cervical spine and 0% for his thoracic spine. The court concluded that the Board’s decision was not clearly erroneous or based on a material misstatement of the evidence.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Brent D. Benjamin; Justice Robin J. Davis; Justice Allen H. Loughry II; Justice Margaret L. Workman; Justice Menis E. Ketchum
JURISDICTION	West Virginia
DECIDED	October 4, 2013
DOCKET	No. 12-0064
DISPOSITION	affirmed
PROCEDURAL POSTURE	Claimant appealed the West Virginia Workers' Compensation Board of Review's affirmance of an Office of Judges order awarding 15% permanent partial disability for the cervical spine and 0% for the thoracic spine.
STANDARD OF REVIEW	The Board of Review's decision would be affirmed unless it clearly violated a constitutional or statutory provision, clearly resulted from erroneous conclusions of law, or was based on a material misstatement or mischaracterization of the evidentiary record.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Ricky Meadows v. Kingston Mining, Inc.

TOPICS

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

PRACTICE AREAS

Workers' Compensation

Administrative Law

Appellate Procedure

QUESTIONS PRESENTED

1. Whether the Board of Review erred in affirming a 0% permanent partial disability rating for the thoracic spine despite two physicians assigning a 5% thoracic-spine impairment.
2. Whether the evidentiary record supported a 15% permanent partial disability award for the cervical spine.

HOLDINGS

1. The Board of Review did not err in affirming a 0% permanent partial disability award for the thoracic spine.
2. The 15% permanent partial disability award for the cervical spine was supported by the medical evidence and was properly affirmed.

KEY QUOTATIONS

"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

Ricky Meadows, a shuttle car operator in an underground coal mine, struck his head on a low portion of the mine roof while operating a mantrip. His workers' compensation claim was held compensable for thoracic and cervical sprains. Medical evaluators assigned differing impairment ratings, including cervical-spine ratings ranging from 5% to 16% and thoracic-spine ratings of either 0% or 5%. The Office of Judges credited the evaluations supporting a 15% cervical-spine impairment and found no compensable thoracic-spine impairment, relying in part on the lack of continuing thoracic treatment or complaints.

PROCEDURAL HISTORY

The claims administrator initially granted a 5% permanent partial disability award for the cervical spine. The Office of Judges reversed that decision and awarded 15% permanent partial disability for the cervical spine and 0% for the thoracic spine. The Board of Review affirmed, and the Supreme Court of Appeals affirmed the Board's final order.

DISPOSITION

affirmed

OPINION

PER CURIAM.

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

RICKY MEADOWS, October 4, 2013

RORY L. PERRY II, CLERK

Claimant Below, Petitioner SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 12-0064 (BOR Appeal No. 2046105)

(Claim No. 2007212303)

KINGSTON MINING, INC.,

Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Ricky Meadows, by Reginald D. Henry, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Kingston Mining, Inc., by Marion E. Ray, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated December 19, 2011, in which the Board affirmed a June 28, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the claims administrator's March 5, 2010, decision granting a 5% permanent partial disability for the cervical spine. 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. Meadows was working as a shuttle car operator for Kingston Mining, Inc. when he struck his head on a low part of the roof of an underground coal mine while operating a mantrip. The claim was held compensable for thoracic sprain and cervical sprain. On February 15, 2010, Dr. Condaras concluded that Mr. Meadows had a 5% whole person impairment with 5% for the cervical spine and a 0% for the thoracic spine. On May 18, 2010, Dr. Guberman concluded that Mr. Meadows had a 20% whole person impairment with 16% for the cervical spine and 5% for the thoracic spine. On July 13, 2010, Dr. Kominsky concluded that Mr. Meadows had a 19% whole person impairment with 15% for the cervical spine and 5% for the thoracic spine. On

February 21, 2011, Dr. Mukkamala concluded that Mr. Meadows had a 15% whole person impairment with 15% for the cervical spine and 0% for the thoracic spine.

The Office of Judges reversed the claims administrator's decision, and held that Mr. Meadows was entitled to a 15% permanent partial disability award for his cervical spine and a 0% permanent partial disability award for his thoracic spine. On appeal, Mr. Meadows disagrees and asserts that the Board of Review erred in holding that he had a 0% impairment for his thoracic spine because Dr. Guberman and Dr. Kominsky both found that he had a 5% impairment for his thoracic spine.

The Office of Judges relied on Dr. Kominsky's and Dr. Mukkamala's recommendations that Mr. Meadows had a 15% impairment for the cervical spine, and concluded that Mr. Meadows had at least a 15% whole person impairment based on these physicians' reports. The Office of Judges granted Mr. Meadows a 15% permanent partial disability award for the cervical spine. The Office of Judges determined that it was difficult to find Dr. Guberman's and Dr. Kominsky's recommendations of a 5% impairment for the thoracic spine credible because Dr. Condaras and Dr. Mukkamala both found 0% impairment for the thoracic spine. Furthermore, Mr. Meadows's medical treatment has all been for the cervical spine except for shortly after the date of injury, and his current complaints are related to the cervical spine. The Office of Judges concluded that the most logical conclusion based on the credible evidence is that Mr. Meadows has a 0% impairment for the thoracic spine. The Board of Review reached the same reasoned conclusions in its decision of December 19, 2011. 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.

Affirmed.

ISSUED: October 4, 2013

CONCURRED IN BY:

Chief Justice Brent D. Benjamin

Justice Robin J. Davis

Justice Allen H. Loughry II

DISSENTING:

Justice Margaret L. Workman

Justice Menis E. Ketchum

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