

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Lee R. Walker v. W. Va. Office of Insurance Commissioner/Star Manufacturing

No. 12-0325 (W. Va. Nov. 22, 2013) · No. No. 12-0325 · Decided November 22, 2013

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the Board of Review's denial of Lee R. Walker's request to reopen his workers' compensation claim for an additional permanent partial disability award. The court held that the evidentiary record was insufficient to show error in the claims administrator's determination that the request was time-barred. The decision was issued as a memorandum decision, with Justice Margaret L. Workman dissenting.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; Chief Justice Brent D. Benjamin; Justice Robin J. Davis; Justice Menis E. Ketchum; Justice Allen H. Loughry II; Justice Margaret L. Workman
JURISDICTION	West Virginia
DECIDED	November 22, 2013
DOCKET	No. 12-0325
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner's appeal from the West Virginia Workers' Compensation Board of Review's order affirming an Office of Judges order, which affirmed the claims administrator's denial of a request to reopen a workers' compensation claim for additional permanent partial disability consideration.
STANDARD OF REVIEW	The Board of Review's decision will not be disturbed unless it is in clear violation of a constitutional or statutory provision, clearly results from erroneous conclusions of law, or is based on a material misstatement or mischaracterization of the evidentiary record. The Court also found no prejudicial error and determined that the case presented no substantial question of law.
PRECEDENTIAL VALUE	Memorandum decision with limited precedential value

PARTIES

Lee R. Walker v. West Virginia Office of Insurance Commissioner,
Star Manufacturing, Inc.

TOPICS

workers compensation

appellate procedure

standard of review

administrative law

PRACTICE AREAS

workers compensation

administrative law

appellate procedure

QUESTIONS PRESENTED

1. Whether the Workers' Compensation Board of Review erred in affirming the denial of Walker's request to reopen his claim for additional permanent partial disability consideration.
2. Whether the record supported Walker's request for an additional independent medical evaluation and a neuropsychiatric evaluation.

HOLDINGS

1. The Board of Review's decision was affirmed because the record did not demonstrate a clear violation of a constitutional or statutory provision, erroneous conclusions of law, or a material misstatement or mischaracterization of the evidentiary record.
2. Walker was not entitled to the requested additional evaluations on the record presented because the evidentiary record was insufficient to show that the claims administrator's decision was erroneous.

KEY QUOTATIONS

"The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument." (1)

"We agree with the reasoning and conclusions of the Board of Review." (2)

FACTUAL BACKGROUND

Walker sustained multiple injuries while working for Star Manufacturing on September 1, 2004, and received a 9% permanent partial disability award in 2005. The claim was later held compensable for several conditions, including headaches, depressive disorder, anxiety, facial wound, mandible fracture, and a left ankle fracture. In 2011, Walker sought to reopen the claim for additional permanent partial disability consideration and requested further independent medical and neuropsychiatric evaluations. The claims administrator denied the request as time-barred, and the reviewing tribunals found the evidentiary record insufficient to establish error.

PROCEDURAL HISTORY

The claims administrator denied Walker's May 2011 request to reopen his claim on a permanent partial disability basis as time-barred under West Virginia Code § 23-4-16(a)(2) (2005). The Workers' Compensation Office of Judges affirmed the denial on September 2, 2011, and the Board of Review affirmed on February 16, 2012. The

Supreme Court of Appeals affirmed the Board's decision, finding no clear legal or constitutional error, material misstatement of the record, or prejudicial error.

DISPOSITION

affirmed

OPINION

PER CURIAM.

STATE OF WEST VIRGINIA FILED SUPREME COURT OF APPEALS November 22, 2013 RORY L. PERRY II, CLERK SUPREME COURT OF APPEALS LEE R. WALKER, OF WEST VIRGINIA Claimant Below, Petitioner vs.) No. 12-0325 (BOR Appeal No. 2046424) (Claim No. 2005009878) WEST VIRGINIA OFFICE OF INSURANCE COMMISSIONER Commissioner Below, Respondent and STAR MANUFACTURING, INC., Employer Below, Respondent MEMORANDUM DECISION Petitioner Lee R. Walker, by John Blair, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review.

The West Virginia Office of Insurance Commissioner, by David Stuart, its attorney, filed a timely response. This appeal arises from the Board of Review's Final Order dated February 16, 2012, in which the Board affirmed a September 2, 2011, Order of the Workers' Compensation Office of Judges.

In its Order, the Office of Judges affirmed the claims administrator's May 12, 2011, decision denying Mr. Walker's request to reopen the claim on a permanent partial disability bases. 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. 1 Mr. Walker sustained multiple injuries on September 1, 2004, while working for Star Manufacturing. On August 12, 2005, he was granted a 9% permanent partial disability award based on an independent medical evaluation performed by Dr. Grady.

On December 15, 2006, the claim was held compensable for headaches, depressive disorder, anxiety state, open wound of the face, mandible fracture, and unspecified closed left ankle fracture. On May 12, 2011, the claims administrator denied Mr. Walker's request to reopen the

claim on a permanent partial disability basis based on a finding that the request is time-barred pursuant to West Virginia Code § 23-4-16(a)(2) (2005).

In its Order affirming the May 12, 2011, claims administrator's decision, the Office of Judges found that there is insufficient evidence included in the record to overturn the claims administrator's decision. Mr. Walker disputes this finding and asserts that he is entitled to an additional independent medical evaluation and a neuropsychiatric evaluation.

As noted by the Office of Judges, the evidentiary record in the instant case is sparse. The Office of Judges noted that Mr. Walker relies on an Order from this Court dated July 29, 2010, which found that depressive disorder, headaches, anxiety, and cervical strain are compensable components of the claim, and which further directed the claims administrator to pay for medical treatment related to those conditions.

The Office of Judges found that the July 29, 2010, Order is not in the evidentiary record. The Office of Judges noted that it may only make decisions based upon the evidence of record, and found that based upon the evidentiary record it cannot be concluded that the claims administrator's decision was erroneous.

The Board of Review reached the same reasoned conclusions in its decision of February 16, 2012. 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: November 22, 2013 CONCURRED IN BY: Chief Justice Brent D. Benjamin Justice Robin J. Davis Justice Menis E. Ketchum Justice Allen H. Loughry II DISSENTING: Justice Margaret L. Workman 2