

# SUPREME COURT OF APPEALS OF WEST VIRGINIA

## Bryan D. Phillips v. Bluefield State College

No. 19-1054 (W. Va. Dec. 11, 2020) · No. No. 19-1054 · Decided December 11, 2020

### SUMMARY

The West Virginia Supreme Court of Appeals affirmed a decision awarding Bryan D. Phillips 4% permanent partial disability benefits for a compensable left shoulder injury arising from a workplace accident. The court concluded that the evidence supported the findings that his elbow and knee conditions produced no ratable impairment and that the higher impairment rating offered by one evaluator was unreliable compared with the opinions of other evaluators. The court issued the decision as a memorandum decision under Rule 21 of the West Virginia Rules of Appellate Procedure.

### CASE DETAILS

|                       |                                                                                                                                                                                                                                                                            |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Appeals of West Virginia                                                                                                                                                                                                                                  |
| WRITING FOR THE COURT | Chief Justice Tim Armstead; Justice Margaret L. Workman; Justice Elizabeth D. Walker; Justice Evan H. Jenkins; Justice John A. Hutchison                                                                                                                                   |
| JURISDICTION          | West Virginia                                                                                                                                                                                                                                                              |
| DECIDED               | December 11, 2020                                                                                                                                                                                                                                                          |
| DOCKET                | No. 19-1054                                                                                                                                                                                                                                                                |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                   |
| PROCEDURAL POSTURE    | Petition for appellate review of a West Virginia Workers' Compensation Board of Review order affirming a 4% permanent partial disability award.                                                                                                                            |
| STANDARD OF REVIEW    | The Court reviewed whether the Board of Review's decision was in clear violation of 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 memorandum decision                                                                                                                                                                                                                                        |
| PARTIES               | Bryan D. Phillips v. Bluefield State College                                                                                                                                                                                                                               |

### TOPICS

workers compensation

administrative law

judicial review of agency action

appellate procedure

standard of review

## PRACTICE AREAS

workers compensation

administrative law

appellate procedure

## QUESTIONS PRESENTED

1. Whether the Workers' Compensation Board of Review erred in affirming a 4% permanent partial disability award.
2. Whether the evidentiary record supported impairment ratings higher than 4% for Phillips's compensable injuries.

## HOLDINGS

1. The Board of Review properly affirmed the 4% permanent partial disability award because the reliable medical evidence supported 4% whole person impairment and did not establish ratable impairment for the other compensable components.
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 on a material misstatement or mischaracterization of the evidentiary record.

## KEY QUOTATIONS

*"The reliable evidence of record demonstrates that Mr. Phillips failed to meet his burden of proof because Dr. Walker's evidence is unreliable when compared to the impairment estimates prepared by Dr. Grady and Dr. Mukkamala."* (at 3)

*"Therefore, the decision of the Board of Review is affirmed."* (at 4)

## FACTUAL BACKGROUND

Phillips was injured while working as a janitor at Bluefield State College when he fell from a ladder, injuring his left shoulder and elbow and right knee. The claim was accepted for compensable conditions involving the left elbow, knee, right knee, and left shoulder, and Phillips underwent left shoulder surgery. Medical evaluators disagreed about the extent of impairment, but the Office of Judges and Board of Review credited the impairment assessments supporting 4% whole person impairment and rejected a higher assessment based on Dr. Walker's uncorroborated range-of-motion findings.

## PROCEDURAL HISTORY

The claims administrator granted Phillips a 4% permanent partial disability award. The Workers' Compensation Office of Judges affirmed, and the Board of Review adopted the Office of Judges' findings and affirmed that decision. Phillips appealed to the Supreme Court of Appeals of West Virginia, which affirmed the Board of Review.

## DISPOSITION

affirmed

## INSTRUCTIONS FOR AN AI ASSISTANT

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