

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Michael Makris v. City of Wheeling

No. 18-0358 (BOR Appeal No. 2052283) (Claim No. 2013031012) · No. No. 18-0358 · Decided November 2, 2018

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed a decision awarding Michael Makris 3% permanent partial disability benefits for a compensable workplace injury. The court held that the higher impairment assessment offered by a later independent medical examiner was unsupported by the record and did not comply with West Virginia impairment-evaluation requirements.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Margaret L. Workman; Justice Elizabeth D. Walker; Justice Paul T. Farrell, sitting by temporary assignment; Justice Tim Armstead; Justice Evan H. Jenkins
JURISDICTION	West Virginia
DECIDED	November 2, 2018
DOCKET	No. 18-0358
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner appealed the West Virginia Workers' Compensation Board of Review's affirmance of a 3% permanent partial disability award granted by the claims administrator and affirmed by the Office of Judges.
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 upon a material misstatement or mischaracterization of the evidentiary record.
PRECEDENTIAL VALUE	memorandum decision with limited precedential value
PARTIES	Michael Makris v. City of Wheeling

TOPICS

workers compensation

standard of review

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appellate procedure

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the Board of Review erred in affirming a 3% permanent partial disability award rather than adopting the 17% impairment assessment of Dr. Trangle.
2. Whether Dr. Trangle's impairment evaluation complied with West Virginia Code of State Rules § 85-20 and was supported by the evidentiary record.

HOLDINGS

1. The Board of Review did not err in affirming the 3% permanent partial disability award.
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

“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

Michael Makris, a police officer, suffered injuries in a work-related automobile accident on May 13, 2013. Several conditions were accepted as compensable, including injuries involving his head, neck, thoracic region, right hip, and left index finger. An independent medical examiner, Ira Ungar, assessed 3% impairment based on range-of-motion deficits in the left index finger, while another examiner, Kevin Trangle, assessed 17% impairment based on dizziness, balance issues, left index finger and right hip range-of-motion deficits, and cervical-spine impairment. The reviewing tribunals found Trangle's assessment unsupported by objective evidence and inconsistent with the treating physician's records, while Ungar's 3% assessment complied with the applicable impairment methodology.

PROCEDURAL HISTORY

The claims administrator granted Makris a 3% permanent partial disability award on June 16, 2016. The Office of Judges affirmed on October 30, 2017, and the Board of Review adopted the Office of Judges' findings and affirmed on March 26, 2018. The Supreme Court of Appeals of West Virginia affirmed the Board of Review.

DISPOSITION

affirmed

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