

SUPREME COURT OF APPEALS OF WEST VIRGINIA

United Parcel Service, Inc. v. Greg Barker

No. 17-0604 (BOR Appeal No. 2051843) (Claim No. 2016005970) · No. No. 17-0604 (BOR Appeal No. 2051843) (Claim No. 2016005970) · Decided December 19, 2017

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the Board of Review’s decision remanding a workers’ compensation claim for further development of the evidence concerning right cubital tunnel syndrome and authorization for right ulnar nerve transposition surgery. The court held that the claim application and treating physician’s request were necessary to permit a fully informed determination of compensability and medical treatment. The decision was issued 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 Allen H. Loughry II; Justice Robin J. Davis; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Elizabeth D. Walker
JURISDICTION	West Virginia
DECIDED	December 19, 2017
DOCKET	No. 17-0604 (BOR Appeal No. 2051843) (Claim No. 2016005970)
DISPOSITION	affirmed
PROCEDURAL POSTURE	United Parcel Service appealed the West Virginia Workers’ Compensation Board of Review’s reversal of an Office of Judges order affirming the claims administrator’s denial of the addition of right cubital tunnel syndrome as a compensable condition and denial of authorization for right ulnar nerve transposition surgery.
STANDARD OF REVIEW	The Court affirmed unless 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PRECEDENTIAL VALUE	Nonprecedential memorandum decision
PARTIES	United Parcel Service, Inc. v. Greg Barker

TOPICS

workers compensation

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 properly remanded the claim for further evidentiary development concerning the compensability of right cubital tunnel syndrome and the reasonableness and necessity of right ulnar nerve transposition surgery.
2. Whether the Board of Review's decision was in clear violation of a constitutional or statutory provision, clearly the result of an erroneous conclusion of law, or based on a material misstatement or mischaracterization of the evidentiary record.

HOLDINGS

1. The Board of Review properly remanded the claim because the claim application and the treating physician's written request for surgery were necessary for a fully informed determination of compensability and medical-treatment authorization.
2. The Board of Review's decision was not in clear violation of a constitutional or statutory provision, clearly the result of an erroneous conclusion of law, or based on a material misstatement or mischaracterization of the evidentiary record.

KEY QUOTATIONS

"The Court finds no substantial question of law and no prejudicial error." (at 1)

"The claim application and the written request of Dr. Ignatiadis regarding the authorization of the surgery would assist the Office of Judges in making a fully informed decision regarding the compensability of the right cubital tunnel syndrome as well as the reasonableness and necessity of the proposed medical treatment."
(at 3)

FACTUAL BACKGROUND

Greg Barker worked as a delivery driver for United Parcel Service for thirty-one years and had a history of bilateral carpal tunnel syndrome and left cubital tunnel syndrome that had been treated as compensable. In 2016, medical testing showed bilateral ulnar neuropathies, and his physician requested that right cubital tunnel syndrome be added as a compensable condition and sought authorization for right ulnar nerve transposition surgery. A utilization reviewer concluded that the available job description did not establish that Barker's work produced the type of direct or chronic trauma associated with cubital tunnel syndrome. The claims administrator denied compensability and treatment authorization, but the Board of Review concluded that the missing claim application and physician request were necessary to fully develop the record.

PROCEDURAL HISTORY

The claims administrator denied the requested addition of right cubital tunnel syndrome and authorization for right ulnar nerve transposition surgery on April 11, 2016. The Office of Judges affirmed that denial on January 31, 2017. The Board of Review reversed and remanded on June 8, 2017, directing further development of the evidentiary record, including submission of the claim application and the treating physician's February 10, 2016 request. The Supreme Court of Appeals of West Virginia affirmed the Board of Review's decision.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The Office of Judges was to issue a new time-frame order, allow Barker to submit the claim application and Dr. Ignatiadis's February 10, 2016 request, consider the new evidence together with the previously considered evidence, and affirm, reverse, or modify its January 31, 2017 order.