

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Debra A. Fisher v. Wheeling Hospital, Inc.

No. 11-1409 (BOR Appeal No. 2045766) (Claim No. 2001002431) · No. No. 11-1409 (BOR Appeal No. 2045766) (Claim No. 2001002431) · Decided July 11, 2013

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the Workers’ Compensation Board of Review’s decision concerning additional compensable components of Debra A. Fisher’s claim arising from a fall at work. The court held that lumbar radiculopathy and lumbar disc displacement were compensable, but post-laminectomy syndrome, cervical sprain, and cervical disc displacement were not.

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 Margaret L. Workman; Justice Allen H. Loughry II; Justice Menis E. Ketchum
JURISDICTION	West Virginia
DECIDED	July 11, 2013
DOCKET	No. 11-1409 (BOR Appeal No. 2045766) (Claim No. 2001002431)
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner's appeal from the West Virginia Workers' Compensation Board of Review's final order affirming, with modification, the claims administrator's determination of compensable conditions.
STANDARD OF REVIEW	The Board of Review's decision was upheld because it 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.
PRECEDENTIAL VALUE	Memorandum decision; no reporter citation appears in the opinion
PARTIES	Debra A. Fisher v. Wheeling Hospital, Inc.

TOPICS

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

PRACTICE AREAS

workers compensation

employment law

administrative law

appellate procedure

QUESTIONS PRESENTED

1. Whether lumbar radiculopathy and a lumbar herniated L3-4 disc should be recognized as additional compensable components of Fisher's workers' compensation claim.
2. Whether post-laminectomy syndrome, cervical sprain, and cervical disc displacement should be recognized as compensable components of the claim.
3. Whether the Workers' Compensation Board of Review's decision was clearly erroneous, legally erroneous, or based on a material misstatement or mischaracterization of the evidentiary record.

HOLDINGS

1. The record supported adding lumbar radiculopathy and a lumbar herniated L3-4 disc as compensable components of Fisher's claim.
2. Post-laminectomy syndrome, cervical sprain, and cervical disc displacement were not established as compensable components of Fisher's claim.
3. 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 2)

FACTUAL BACKGROUND

Debra A. Fisher slipped on a wet floor and landed on her right hip, and her workers' compensation claim was initially held compensable for a lumbar sprain. After a functional capacity evaluation, she experienced increased low-back and leg pain; a May 2008 MRI showed a mild superimposed L3-4 disc herniation and an annular tear. Fisher also had preexisting cervical-spine problems and two prior laminectomies attributable to earlier work-related injuries.

PROCEDURAL HISTORY

The claims administrator initially added lumbar radiculopathy as a compensable component and denied several additional conditions. The Workers' Compensation Office of Judges modified that decision, adding lumbar radiculopathy and a lumbar herniated L3-4 disc while denying post-laminectomy syndrome, cervical sprain, and cervical disc displacement. The Board of Review affirmed the Office of Judges, 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 DEBRA A. FISHER, July 11, 2013 RORY L. PERRY II, CLERK Claimant Below, Petitioner SUPREME COURT OF APPEALS OF WEST VIRGINIA vs.) No. 11-1409 (BOR Appeal No. 2045766) (Claim No. 2001002431) WHEELING HOSPITAL, INC., Employer Below, Respondent MEMORANDUM DECISION Petitioner Debra A. Fisher, by M. Jane Glauser, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review.

Wheeling Hospital, Inc., by Jennifer B. Hagedorn, its attorney, filed a timely response. This appeal arises from the Board of Review's Final Order dated September 19, 2011, in which the Board affirmed a March 3, 2011, Order of the Workers' Compensation Office of Judges.

In its Order, the Office of Judges modified the claims administrator's August 24, 2010, decision which added lumbar radiculopathy as a compensable component, and denied the conditions of lumbar disc displacement, cervical strain, cervical disc displacement, and post laminectomy syndrome as additional compensable components.

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. Ms. Fisher suffered an injury when she slipped on a wet floor and landed on her right hip. The claim was held compensable for lumbar sprain.

The Office of Judges modified the claims administrator's decision and held that both lumbar radiculopathy and lumbar disc displacement are additional compensable components and denied post-laminectomy syndrome, cervical sprain, and cervical disc displacement as compensable components.

On appeal, Ms. Fisher disagrees and asserts that the Office of Judges erred in its interpretation of post-laminectomy syndrome which clearly includes a recurrent disc herniation which has been found to be compensable by the 1 Office of Judges and in failing to include the cervical

component as compensable because the medical consensus supports that her leg weakness is from the lumbar spine conditions that contributed to her falls, causing the disc herniation.

Wheeling Hospital maintains that Ms. Fisher has never had a laminectomy related to the initial claim and is not entitled to the conditions of cervical sprain and cervical disc displacement as she has experienced issues with her neck and headaches for many years.

The Office of Judges concluded that Ms. Fisher did not have a laminectomy due to the compensable injury because Ms. Fisher's two laminectomies were due to prior work-related injuries. The Office of Judges held that lumbar radiculopathy and lumbar herniated L3-4 disc should be added as compensable components and noted that Ms. Fisher had increased pain in her lower back and going down her legs after the functional capacity evaluation and an MRI from May of 2008 indicated mild superimposed disc herniation at L3-4 and an annular tear at L3-4.

The Office of Judges concluded that the record is not sufficient to determine whether Ms. Fisher injured her cervical spine as a result of her legs giving out after a functional capacity evaluation that aggravated her low back condition in light of her established preexisting cervical spine problem.

The Office of Judges relied on Dr. Hargraves's documentation which never stated that Ms. Fisher's cervical condition was compensable. It discredited Dr. Mills's recommendation for the cervical condition because it was supported by very little explanation and failed to relate the cervical problem to any work-related injury. Ultimately, the Office of Judges held that Ms. Fisher had demonstrated that lumbar radiculopathy and lumbar herniated disc should be added as compensable components but that post-laminectomy syndrome, cervical sprain, and cervical disc displacement should not be held compensable.

The Board of Review reached the same reasoned conclusions in its decision of September 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: July 11, 2013
CONCURRED IN BY: Chief Justice Brent D. Benjamin Justice Robin J. Davis Justice Margaret L. Workman Justice Allen H. Loughry II DISSENTING: Justice Menis E. Ketchum 2