

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

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