

SUPREME COURT OF APPEALS OF WEST VIRGINIA

**Tammy McClung, Roger W. McClung (Deceased) v. West Virginia
Office of Insurance Commissioner; Central Appalachian Coal
Company**

No. 18-0922 (W. Va. Sept. 13, 2019) · No. No. 18-0922 (BOR Appeal No. 2052900; Claim No. 840069232) ·
Decided September 13, 2019

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the Board of Review’s denial of Tammy McClung’s applications for 104 weeks of dependent’s benefits and fatal dependent’s benefits. The court held that McClung did not qualify as an invalid dependent and was not dependent upon the decedent for support. 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 Elizabeth D. Walker; Justice Margaret L. Workman; Justice Tim Armstead; Justice Evan H. Jenkins; Justice John A. Hutchison
JURISDICTION	West Virginia
DECIDED	September 13, 2019
DOCKET	No. 18-0922 (BOR Appeal No. 2052900; Claim No. 840069232)
DISPOSITION	affirmed
PROCEDURAL POSTURE	Tammy McClung appealed the West Virginia Workers' Compensation Board of Review's decision reversing an Office of Judges order that awarded dependent's benefits and remanded the claim for further consideration of occupational pneumoconiosis.
STANDARD OF REVIEW	The Board of Review's decision would be affirmed unless it was in clear violation of a constitutional or statutory provision, clearly the result of erroneous conclusions of law, or so clearly wrong based on the evidentiary record that, even when all inferences were resolved in favor of the Board's findings, reasoning, and conclusions, there was insufficient support to sustain the decision.

PRECEDENTIAL VALUE	unpublished memorandum decision; nonprecedential
PARTIES	Tammy McClung, Roger W. McClung (Deceased) v. West Virginia Office of Insurance Commissioner, Central Appalachian Coal Company

TOPICS

insurance administrative law judicial review of agency action standard of review appellate procedure

PRACTICE AREAS

workers' compensation administrative law appellate procedure

QUESTIONS PRESENTED

1. Whether Tammy McClung qualified as an invalid child under West Virginia Code § 23-4-10(d).
2. Whether Tammy McClung was dependent upon the decedent for support and therefore eligible for dependent's benefits under West Virginia Code § 23-4-10(d) and (e).
3. Whether the Board of Review's decision affirming the denial of benefits was clearly erroneous or otherwise invalid under the applicable standard of review.

HOLDINGS

1. McClung did not qualify as an invalid dependent child because the evidence showed that she could care for her daily needs and required no supervision or assistance, notwithstanding her psychiatric diagnoses and a physician's invalid certification.
2. McClung was not dependent upon the decedent because she had not received financial support from him for roughly twenty-five years, did not live with him, and did not reasonably expect him to continue supporting her.
3. The Board of Review's decision reinstating the denial of dependent's benefits was not clearly erroneous, legally defective, or unsupported by the evidentiary record, and therefore was affirmed.

KEY QUOTATIONS

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

“Ms. McClung has not lived with her father in nearly twenty-five years and has not received money from him for roughly the same amount of time.” (at 4)

“She does not quality as an invalid dependent of the decedent.” (at 4)

FACTUAL BACKGROUND

Roger McClung, who had received a permanent total disability award, died on August 20, 2015; his death certificate identified coal workers' pneumoconiosis as a factor in his death. His daughter, Tammy McClung,

sought fatal and 104-week dependent's benefits, asserting that she was an invalid child dependent on him, but she had not lived with him for nearly twenty-five years and acknowledged that he had not provided her money for roughly that period. Although she had significant psychiatric diagnoses and received Social Security benefits tied to her father's disability claim, the evidence showed that she lived with her boyfriend and children, required no supervision or assistance with daily activities, and had no guardian.

PROCEDURAL HISTORY

The claims administrator denied McClung's applications for 104 weeks of dependent's benefits and fatal dependent's benefits on July 7, 2016. The Office of Judges reversed, awarded 104 weeks of benefits, found the claim compensable on a nonmedical basis, and referred the claim to the Occupational Pneumoconiosis Board. The Board of Review reversed the Office of Judges on September 13, 2018, reinstated the claims administrator's denial, and the Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Poccardi v. State Compensation Commissioner, 79 W. Va. 684, 91 S.E. 663 (1917)
- Johnson v. West Virginia Office of Insurance Commissioner, 226 W. Va. 650, 704 S.E.2d 650 (2010)
- Alexander v. State Compensation Commissioner, 113 W. Va. 223, 167 S.E. 589 (1993)