

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Georgetta Francis Mullins v. Logan County Board of Education

Mullins · No. No. 13-0196 · Decided March 18, 2014

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the Board of Review’s decision denying Georgetta Francis Mullins temporary total disability benefits. The court concluded that the evidence did not establish that her inability to work resulted from the compensable June 9, 2011, injury, particularly after an independent medical evaluation found maximum medical improvement.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Robin J. Davis; Justice Brent D. Benjamin; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	March 18, 2014
DOCKET	No. 13-0196
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner appealed the West Virginia Workers’ Compensation Board of Review’s final order affirming the Office of Judges’ order, which affirmed the claims administrator’s closure of her claim for temporary total disability benefits.
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 based on a material misstatement or mischaracterization of the evidentiary record.
PRECEDENTIAL VALUE	Memorandum decision; the court found no substantial question of law and no prejudicial error.
PARTIES	Georgetta Francis Mullins v. Logan County Board of Education

TOPICS

workers compensation

administrative law

appellate procedure

standard of review

employment law

PRACTICE AREAS

Workers' compensation

Administrative law

Appellate procedure

Employment law

QUESTIONS PRESENTED

1. Whether Mullins was entitled to temporary total disability benefits after the claims administrator closed her claim.
2. Whether the Board of Review clearly erred by affirming the determination that the evidence did not establish that her inability to work resulted from the compensable June 9, 2011 injury.

HOLDINGS

1. Under West Virginia Code § 23-4-7a (2005), temporary total disability benefits are not payable after a claimant reaches maximum medical improvement, is released to return to work, or actually returns to work, whichever occurs first.
2. The Board of Review's decision must be affirmed 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.

FACTUAL BACKGROUND

Mullins sustained right elbow and right forearm contusions on June 9, 2011, while moving a desk in the course of her employment as a custodian. An independent medical evaluation on August 31, 2011, found that she had reached maximum medical improvement for the injury. Although her treating physician later issued a work excuse, the excuse did not identify whether her inability to work resulted from the compensable injury or from unrelated ulnar neuropathy.

PROCEDURAL HISTORY

Mullins sustained right elbow and right forearm contusions while moving a desk at work. The claims administrator closed her temporary total disability benefits on August 9, 2011. The Office of Judges affirmed that decision on September 21, 2012, and the Board of Review affirmed on February 11, 2013. The Supreme Court of Appeals reviewed the Board's decision and affirmed it.

DISPOSITION

affirmed

OPINION

PER CURIAM.

STATE OF WEST VIRGINIA FILED SUPREME COURT OF APPEALS March 18, 2014 RORY L. PERRY II, CLERK SUPREME COURT OF APPEALS GEORGETTA FRANCIS MULLINS, OF WEST VIRGINIA Claimant Below, Petitioner vs.) No. 13-0196 (BOR Appeal No. 2047760)

(Claim No. 2011041603) LOGAN COUNTY BOARD OF EDUCATION, Employer Below, Respondent MEMORANDUM DECISION Petitioner Georgetta Francis Mullins, by John Blair, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review.

The Logan County Board of Education, by Lisa Warner Hunter, its attorney, filed a timely response. This appeal arises from the Board of Review's Final Order dated February 11, 2013, in which the Board affirmed a September 21, 2012, Order of the Workers' Compensation Office of Judges.

In its Order, the Office of Judges affirmed the claims administrator's August 9, 2011, decision closing Ms. Mullins's claim for temporary total disability benefits. 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. Mullins sustained right elbow and right forearm contusions on June 9, 2011, while moving a desk in the course of her employment as a custodian with the Logan County Board of Education.

The claims administrator closed Ms. Mullins's claim for temporary total disability benefits on August 9, 2011. On August 31, 2011, Prasadarao Mukkamala, M.D., performed an independent medical evaluation and found that Ms. Mullins had reached maximum medical improvement with regard to the June 9, 2011, injury.

On September 28, 2011, Robert McCleary, 1 D.O., Ms. Mullins's treating physician, provided her with a work excuse indicating that she should refrain from working until November 28, 2011. In its Order affirming the August 9, 2011, claims administrator's decision, the Office of Judges held that a preponderance of the evidence fails to demonstrate that Ms. Mullins is entitled to temporary total disability benefits as a result of the June 9, 2011, injury.

Ms. Mullins disputes this finding and asserts that the evidence of record demonstrates that she is entitled to temporary total disability benefits in conjunction with the June 9, 2011, injury. West Virginia Code § 23-4-7a (2005) states that temporary total disability benefits are not paid after a claimant has reached maximum medical improvement, is released to return to work, or actually returns to work, whichever occurs first.

Dr. Mukkamala found Ms. Mullins to be at maximum medical improvement with regard to the June 9, 2011, injury on August 31, 2011. Further, the Office of Judges found that Ms. Mullins

failed to submit any medical evidence indicating that she was not working as a result of the June 9, 2011, injury.

The Office of Judges took note of the work excuse authored by Dr. McCleary. However, the Office of Judges found that the work excuse does not indicate the particular injury that is the subject of Ms. Mullins's purported disability, and further found that this is problematic because Dr. McCleary has unsuccessfully attempted to have ulnar neuropathy added as a compensable component of an unrelated claim.

The Office of Judges concluded that it is unclear whether Dr. McCleary attributed Ms. Mullins's inability to work to the June 9, 2011, injury or to the unrelated ulnar neuropathy. The Board of Review affirmed the conclusions of the Office of Judges in its decision of February 11, 2013.

We agree with the 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: March 18, 2014
CONCURRED IN BY: Chief Justice Robin J. Davis Justice Brent D. Benjamin Justice Margaret L. Workman Justice Menis E. Ketchum Justice Allen H. Loughry II 2