

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Betty Newsome v. H. William Mattingly Corporation

Newsome · No. No. 13-0723; BOR Appeal No. 2048054; Claim No. 2013007961 · Decided October 7, 2014

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the denial of Betty Newsome's workers' compensation claim arising from workplace dust exposure that allegedly aggravated her asthma. The court held that aggravation of pre-existing asthma did not establish an occupational disease because the evidence did not show a definite causal connection or lasting lung damage caused by the employment exposure. The court found no constitutional or statutory violation, erroneous legal conclusion, or material misstatement of the evidence.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Robin J. Davis; Brent D. Benjamin; Margaret L. Workman; Menis E. Ketchum; Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	October 7, 2014
DOCKET	No. 13-0723; BOR Appeal No. 2048054; Claim No. 2013007961
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner's appeal from a final order of the West Virginia Workers' Compensation Board of Review affirming the Office of Judges' affirmance of the claims administrator's rejection of her application for workers' compensation benefits.
STANDARD OF REVIEW	The Court reviewed whether 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PRECEDENTIAL VALUE	Unpublished memorandum decision; precedential effect is not stated in the source.
PARTIES	Betty Newsome v. H. William Mattingly Corporation

TOPICS

workers compensation

administrative law

judicial review of agency action

appellate procedure

standard of review

PRACTICE AREAS

workers compensation

administrative law

appellate procedure

QUESTIONS PRESENTED

1. Whether Newsome established that her respiratory condition was an occupational disease incurred in the course of and resulting from her employment under West Virginia Code § 23-4-1(f).
2. Whether an aggravation of pre-existing asthma by workplace dust was sufficient to establish a compensable occupational disease.

HOLDINGS

1. An aggravation of pre-existing asthma, without proof that the employment proximately caused an occupational disease, is insufficient to establish entitlement to workers' compensation benefits.
2. The Board of Review's decision was not in clear violation of a constitutional or statutory provision, was not clearly based on erroneous conclusions of law, and was not based on a material misstatement or mischaracterization of the evidentiary record.

KEY QUOTATIONS

“The dust present in Ms. Newsome’s office on September 11, 2012, may have aggravated her asthma, but the evidence in the record shows that her asthma was not proximately caused by her work as required under West Virginia Code § 23-4-1(f) (2008).” (2)

FACTUAL BACKGROUND

Betty Newsome, a receptionist with a history of asthma and other breathing problems, was exposed to substantial dust when windows in her office were replaced on September 11 and 12, 2012. She experienced difficulty breathing and later sought medical treatment, with some physicians suggesting that dust may have exacerbated her asthma. Other evidence showed that her respiratory problems predated the exposure, pulmonary testing was barely below normal, and imaging revealed no infiltrates, edema, acute findings, or lasting lung damage. She applied for workers' compensation benefits, claiming that the workplace dust caused an occupational disease.

PROCEDURAL HISTORY

The claims administrator rejected Newsome's application for workers' compensation benefits on October 9, 2012. The Office of Judges affirmed that decision on December 31, 2012, and the Board of Review affirmed on July 5, 2013. Newsome appealed to the Supreme Court of Appeals of West Virginia, which affirmed the Board's decision in a memorandum decision.

DISPOSITION

affirmed

CASES CITED

- Bannister v. State Workmen's Compensation Commissioner, 154 W. Va. 172, 174 S.E.2d 605 (1970)

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