

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Susan J. Marl v. Marshall County Board of Education

Marl · No. No. 13-1269 · Decided November 12, 2014

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the Board of Review's denial of Susan J. Marl's motion to file a late protest of a claims administrator's decision rejecting her workers' compensation application. The court held that the protest was filed well beyond the statutory time limits and that the Office of Judges lacked jurisdiction to accept it.

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	November 12, 2014
DOCKET	No. 13-1269
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner's appeal from the West Virginia Workers' Compensation Board of Review's affirmance of the Office of Judges' denial of her motion for late filing of a protest to a claims administrator's decision rejecting her workers' compensation application.
STANDARD OF REVIEW	The Court would not disturb the Board of Review's decision 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	Published memorandum decision; no substantial question of law was found.
PARTIES	Susan J. Marl v. Marshall County Board of Education

TOPICS

workers compensation

administrative law

appellate procedure

exhaustion of remedies

PRACTICE AREAS

Workers' compensation

Administrative law

Appellate procedure

QUESTIONS PRESENTED

1. Whether the Workers' Compensation Office of Judges could accept Marl's late protest of the claims administrator's decision.
2. Whether the Board of Review's affirmance of the denial of the late protest should be reversed.

HOLDINGS

1. A claims administrator's decision becomes final unless protested within sixty days of receipt, and the protest period may be extended for good cause only for an additional sixty days; because Marl's protest was filed outside that maximum period, the Office of Judges lacked jurisdiction to accept it.
2. 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

“West Virginia Code § 23-5-1(b) (2009) states that any claims administrator’s decision is final unless it is protested within sixty days of receipt of the decision.” (at 1)

“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

The claims administrator issued a decision rejecting Susan J. Marl's application for workers' compensation benefits on December 19, 2012. Marl received the decision on January 8, 2013, but her motion for a late filing of protest was dated September 3, 2013. The Office of Judges concluded that the protest was filed well outside the maximum statutory period and that it lacked jurisdiction to accept it.

PROCEDURAL HISTORY

The claims administrator rejected Marl's application for workers' compensation benefits on December 19, 2012. The Office of Judges denied her motion for a late filing of protest, and the Board of Review affirmed that decision on November 26, 2013. The Supreme Court of Appeals of West Virginia affirmed the Board's order.

DISPOSITION

affirmed

OPINION

Susan J. Marl v. Marshall County Board of Education

PER CURIAM.

STATE OF WEST VIRGINIA

FILED

SUPREME COURT OF APPEALS November 12, 2014

RORY L. PERRY II, CLERK

SUPREME COURT OF APPEALS

SUSAN J. MARL, OF WEST VIRGINIA

Claimant Below, Petitioner vs.) No. 13-1269 (BOR Appeal No. 2048957) (Claim No. 2013014726)

MARSHALL COUNTY BOARD OF EDUCATION,

Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Susan J. Marl, pro se, appeals the decision of the West Virginia Workers' Compensation Board of Review. This appeal arises from the Board of Review's Final Order dated November 26, 2013, in which the Board affirmed a November 1, 2013, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges denied Ms. Marl's motion for late filing of protest to the December 19, 2012, claims administrator's decision rejecting her application for workers' compensation 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. West Virginia Code § 23-5-1(b) (2009) states that any claims administrator's decision is final unless it is protested within sixty days of receipt of the decision. West Virginia Code § 23-5-6 (2003) provides that the time period for filing a protest may be extended, upon a showing of good cause, for an additional sixty days. The Office of Judges found that the claims administrator's decision was issued on December 19, 2012; was received by Ms. Marl on January 8, 2013; and her motion for a late filing of protest was dated September 3, 2013. As noted by the Office of Judges, Ms. Marl's protest of the claims administrator's decision was filed 1 well outside the maximum time frame to file a protest enumerated in West Virginia Code § 23-5

6. The Office of Judges then found that it could not accept Ms. Marl's protest because the Office of Judges no longer had jurisdiction over the claim as Ms. Marl's protest was filed outside the allowable time frame for protests contained in West Virginia Code § 23-5-1(b) and West Virginia Code § 23-5-6. The Board of Review reached the same reasoned conclusions in its decision of November 26, 2013. 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: November 12, 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

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