

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Gary Bailey v. BJ Services Co.

Bailey v. BJ Services Co. · No. No. 15-0285 · Decided February 26, 2016

SUMMARY

The West Virginia Supreme Court of Appeals affirmed a decision denying Gary Bailey more than a 0% permanent partial disability award for a compensable lumbosacral strain. The court held that the medical evidence supported a finding of 0% impairment attributable to the compensable injury and that the additional conditions underlying a higher impairment rating were not compensable under the claim.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; Justice Robin J. Davis; Justice Brent D. Benjamin; Justice Margaret L. Workman; Justice Allen H. Loughry II; Chief Justice Menis E. Ketchum
JURISDICTION	West Virginia
DECIDED	February 26, 2016
DOCKET	No. 15-0285
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petition for appellate review of a West Virginia Workers' Compensation Board of Review final order affirming an Office of Judges order that affirmed a claims administrator's 0% permanent partial disability award.
STANDARD OF REVIEW	The Board of Review's decision will not be disturbed unless it is in clear violation of a constitutional or statutory provision, clearly results from erroneous conclusions of law, or is based on a material misstatement or mischaracterization of the evidentiary record. The Court also reviewed the Office of Judges' exercise of discretion in evaluating the medical evidence.
PRECEDENTIAL VALUE	Nonprecedential memorandum decision
PARTIES	Gary Bailey v. BJ Services Company

TOPICS

workers compensation

judicial review of agency action

standard of review

appellate procedure

PRACTICE AREAS

workers compensation

administrative law

appellate procedure

QUESTIONS PRESENTED

1. Whether the Board of Review erred in affirming a 0% permanent partial disability award for Bailey's compensable lumbosacral strain.
2. Whether the Office of Judges properly relied on Dr. Grady's 0% impairment evaluation and rejected Dr. Snead's higher impairment ratings because they were based on noncompensable conditions and did not follow West Virginia Code of State Rules § 85-20-C.

HOLDINGS

1. Bailey was not entitled to more than a 0% permanent partial disability award because the only compensable condition was the lumbosacral strain, and the reliable medical evidence established 0% whole person impairment attributable to that condition.
2. The Board of Review's decision was not clearly erroneous, legally erroneous, constitutionally or statutorily invalid, or based on a material misstatement or mischaracterization of the evidence.

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 3)

FACTUAL BACKGROUND

Bailey injured his lower back while lifting a manifold in the course of working as an oil pump operator for BJ Services Company on October 26, 2008. His claim was accepted only for a lumbosacral strain; disc herniation, degenerative disc disease, spondylosis, and related conditions were expressly found noncompensable, and Bailey did not appeal that determination. Medical evaluators differed on the impairment attributable to his back condition, but the claims administrator, Office of Judges, and Board of Review relied on evaluations attributing 0% impairment to the compensable strain and attributing the greater impairment ratings to noncompensable disc conditions.

PROCEDURAL HISTORY

The claims administrator granted Bailey a 0% permanent partial disability award for his compensable lumbosacral strain. The Workers' Compensation Office of Judges affirmed the award on September 16, 2014, and the Board of Review affirmed on February 25, 2015. Bailey appealed to the Supreme Court of Appeals of West Virginia, which affirmed the Board's decision.

DISPOSITION

affirmed

CASES CITED

- Bailey v. BJ Services Company, No. 12-0334 (Dec. 11, 2013) (memorandum decision)

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/west-virginia-supreme-court-of-appeals-of-west-virginia/2016/gary-bailey-v-bj-services-co-uu15nlc0>