

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Chateau Grove, Inc. v. Cynthia Holland

Chateau Grove, Inc. v. Holland, No. 18-0024 (W. Va. May 21, 2018) · No. No. 18-0024 · Decided May 21, 2018

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed a decision ordering a vocational rehabilitation evaluation for Cynthia Holland, an injured licensed practical nurse, rather than immediately granting or denying retraining benefits. The court concluded that the employer had not established that its proposed light-duty position accommodated Holland’s restrictions and that the vocational rehabilitation hierarchy should be assessed by a qualified evaluator.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Margaret L. Workman; Justice Robin J. Davis; Justice Menis E. Ketchum; Justice Allen H. Loughry II; Justice Elizabeth D. Walker
JURISDICTION	West Virginia
DECIDED	May 21, 2018
DOCKET	No. 18-0024
DISPOSITION	affirmed
PROCEDURAL POSTURE	Chateau Grove appealed the West Virginia Workers’ Compensation Board of Review’s affirmance of an Office of Judges order modifying the claims administrator’s denial of vocational rehabilitation and retraining 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	Published memorandum decision with limited precedential value under West Virginia appellate practice
PARTIES	Chateau Grove, Inc. v. Cynthia Holland

TOPICS

workers compensation

administrative law

appellate procedure

standard of review

employment law

PRACTICE AREAS

workers compensation

employment law

administrative law

QUESTIONS PRESENTED

1. Whether the Board of Review properly affirmed an order directing a vocational rehabilitation evaluation under the hierarchy of vocational rehabilitation benefits rather than granting retraining immediately.
2. Whether the Board of Review's decision was clearly erroneous, legally erroneous, constitutionally or statutorily invalid, or based on a material misstatement or mischaracterization of the evidentiary record.

HOLDINGS

1. Holland was not entitled to automatic advancement to retraining because she had not established that the vocational rehabilitation priorities preceding retraining were not viable. The proper disposition was referral to a qualified vocational evaluator to work through the hierarchy of vocational benefits.
2. The Board of Review did not err in affirming the Office of Judges' modification of the claims administrator's decision.

KEY QUOTATIONS

"The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument." (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

Cynthia Holland, a licensed practical nurse, injured her neck and back while lifting a patient on July 9, 2015, and her workers' compensation claim was held compensable for a cervical sprain and cervical herniation. After cervical surgery, medical and functional-capacity evaluations limited her to sedentary or light work and concluded that she could not perform her pre-injury licensed practical nurse position. Chateau Grove offered Holland a purported light-duty position, but she declined it because the duties allegedly required her to push 100-pound medication carts. The Office of Judges determined that the employer had not rebutted that assertion and ordered a vocational evaluation to determine which rehabilitation priority was appropriate.

PROCEDURAL HISTORY

The claims administrator denied Holland's request for vocational rehabilitation and retraining on July 29, 2016. The Office of Judges modified that decision on May 9, 2017, ordering a referral to a vocational rehabilitation professional to evaluate the hierarchy of rehabilitation options rather than automatically granting retraining. The Board of Review affirmed on September 29, 2017, and the Supreme Court of Appeals affirmed the Board's decision.

DISPOSITION

affirmed

OPINION

PER CURIAM.

STATE OF WEST VIRGINIA SUPREME COURT OF APPEALS FILED CHATEAU GROVE, INC., May 21, 2018 EDYTHE NASH GAISER, CLERK Employer Below, Petitioner SUPREME COURT OF APPEALS OF WEST VIRGINIA vs.) No. 18-0024 (BOR Appeal No. 2052135) (Claim No. 2016025087) CYNTHIA HOLLAND, Claimant Below, Respondent MEMORANDUM DECISION Petitioner, Chateau Grove, Inc., by, Jeffrey Carder, its attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review.

Cynthia Holland, by James R. Fox, her attorney, filed a timely response. The issue on appeal is vocational rehabilitation benefits. On July 29, 2016, the claims administrator denied a request for vocational rehabilitation and retraining.

The Office of Judges modified the claims administrator's decision in its May 9, 2017, Order. The Order was affirmed by the Board of Review on September 29, 2017. 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. Holland, a licensed practical nurse, injured her neck and back when she was lifting a patient on July 9, 2015. Her claim was held compensable for a cervical sprain and cervical herniation. She underwent an anterior cervical discectomy and fusion at C5-C6 on October 21, 2015.

Prasadarao B. Mukkamala, M.D., performed an independent medical evaluation on May 3, 2016. He noted a chief complaint of pain in the neck with radiation to the right upper extremity. He diagnosed cervical sprain, status post anterior cervical discectomy and fusion at C5-6. He opined that Ms. Holland was limited to sedentary/light physical demand level jobs and 1 assessed 22% whole person impairment.

On May 18, 2016, Sally Oxley, PT, CHT, OCS, Cert. MDT, performed a functional capacity evaluation. She determined that Ms. Holland was not capable of performing the job of licensed

practical nurse as Ms. Holland was limited to the light physical demand classification of work. Ms. Oxley recommended a work conditioning program to assist Ms. Holland's return to work.

She opined that Ms. Holland was a potentially difficult rehabilitation candidate due to her inconsistent levels of physical effort throughout the evaluation. In her opinion, Ms. Holland would perform best in an occupation that allows frequent postural changes. Chateau Grove offered Ms. Holland a position that would accommodate her work restrictions on July 20, 2016.

Her job duties would include administering medication to residents, doing set medication passes, ordering medications from the pharmacy, charting, taking vital signs, monitoring lab work, and maintaining paperwork as required by regulations.

On July 29, 2016, the claims administrator denied a request for vocational rehabilitation and retraining. In a letter from her attorney, Ms. Holland declined Chateau Grove's job offer on August 9, 2016. Ms. Holland's attorney opined the proposed employment exceeded her physical restrictions and did not identify the physical demand levels of each job function by requiring her to push 100 pound medication carts.

A request for rehabilitation retraining was made as Chateau Grove did not have an appropriate position available. Robert B. Walker, M.D., performed an independent medical evaluation on August 26, 2016. He assessed 28% whole person impairment. He did not render an opinion regarding Ms. Holland's physical work capabilities, but noted the limits of the functional capacity evaluation.

In its May 9, 2017, Order, the Office of Judges noted that Ms. Holland argued that the employer pretended it could accommodate her physical restrictions by offering her a light duty position. However, Ms. Holland asserted that the position required her to administer medication to residents which required her to push a 100-pound cart every day.

The Office of Judges determined that Chateau Grove had not rebutted that assertion. The Office of Judges reviewed the hierarchy of priorities used to determine the need for vocational rehabilitation. It found that Ms. Holland had not proven that the priorities leading up to the highest priority of retraining, which Ms. Holland had requested, were not viable options.

Therefore, it modified the claims administrator's denial of the request for vocational rehabilitation to order a referral to a vocational rehabilitation professional to work through the hierarchy of priorities instead of automatically advancing Ms. Holland through the priorities to retraining.

The Board of Review adopted the findings of facts and conclusions of law of the Office of Judges and affirmed its decision on September 29, 2017. After review, we agree with the reasoning of the Office of Judges as affirmed by the Board of Review. Due to her physical restrictions, Ms. Holland is not able to return to her pre-employment position with Chateau Grove.

In order to determine the proper rehabilitation benefits, Ms. Holland should have an evaluation by a qualified vocational evaluator to work through the hierarchy of vocational benefits. Therefore, the Board of Review did not err in affirming the Office of Judges modification of the claims administrator's decision. 2 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: May 21, 2018
CONCURRED IN BY: Chief Justice Margaret L. Workman Justice Robin J. Davis Justice Menis
E. Ketchum Justice Allen H. Loughry II Justice Elizabeth D. Walker 3