

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Shawn D. Burns v. Cheddar's Operations, LLC

Burns · No. No. 12-0266 · Decided November 20, 2013

SUMMARY

The Supreme Court of Appeals of West Virginia reversed and remanded a workers’ compensation decision denying Shawn D. Burns’s claim for injuries sustained when he tripped and fell while working as a dishwasher at Cheddar’s Operations, LLC. The court held that the evidence sufficiently established a personal injury received in the course of and resulting from his employment under West Virginia Code § 23-4-1(a), and found the Board of Review’s decision to be the result of an erroneous conclusion of law.

CASE DETAILS

|                       |                                                                                                                                                         |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Appeals of West Virginia                                                                                                               |
| WRITING FOR THE COURT | Per Curiam; Chief Justice Brent D. Benjamin; Justice Robin J. Davis; Justice Menis E. Ketchum; Justice Margaret L. Workman; Justice Allen H. Loughry II |
| JURISDICTION          | West Virginia                                                                                                                                           |
| DECIDED               | November 20, 2013                                                                                                                                       |
| DOCKET                | No. 12-0266                                                                                                                                             |
| DISPOSITION           | reversed_and_remanded                                                                                                                                   |
| PROCEDURAL POSTURE    | Claimant appealed the West Virginia Workers' Compensation Board of Review's affirmance of an order denying workers' compensation benefits.              |
| STANDARD OF REVIEW    | The court reviewed the Board of Review's decision and determined that it was clearly the result of an erroneous conclusion of law.                      |
| PRECEDENTIAL VALUE    | nonprecedential                                                                                                                                         |
| PARTIES               | Shawn D. Burns v. Cheddar's Operations, LLC                                                                                                             |

TOPICS

- workers compensation
- agency adjudication
- appellate procedure
- standard of review

PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether the evidence established that Burns sustained a personal injury in the course of and resulting from his employment under West Virginia Code § 23-4-1(a).
2. Whether the Workers' Compensation Board of Review clearly erred in concluding that Burns had not proved a compensable injury.

## HOLDINGS

1. A claimant establishes compensability by showing a personal injury received in the course of employment and resulting from the employment. Burns's evidence satisfied those requirements because he was found injured on the restaurant floor while performing his employment duties and was diagnosed with multiple sprains shortly thereafter.
2. The Board of Review's decision denying benefits was clearly the result of an erroneous conclusion of law.

## KEY QUOTATIONS

*“For Mr. Burns’s claim to be held compensable under West Virginia Code § 23-4-1(a), he must show (1) a personal injury; (2) received in the course of his employment; and (3) resulting from the employment.” (1)*

*“This evidence is sufficient to conclude that Mr. Burns was injured while performing his duties in the course of his employment.” (2)*

## FACTUAL BACKGROUND

On September 18, 2010, Burns was working as a dishwasher for Cheddar's Operations when he tripped and fell in the dish room over either a drain or dishes. Managers heard a crash and found him lying on the floor with pans or dishes on his ankle and body. He sought medical treatment the next day and was diagnosed with right hip, right ankle, lumbar, thoracic, and cervical sprains; his ankle was placed in an air cast. Although later medical evidence identified degenerative changes and no acute injury on x-rays, an independent medical examiner opined that Burns had recovered from soft-tissue injuries and that a cervical MRI was reasonable.

## PROCEDURAL HISTORY

The claims administrator denied Burns's application for workers' compensation benefits on October 18, 2010. The Workers' Compensation Office of Judges affirmed the denial on August 12, 2011, and the Board of Review affirmed on February 21, 2012. The Supreme Court of Appeals of West Virginia reversed the Board's decision and remanded with a finding of compensability.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

The matter was remanded with a finding that Burns's claim was compensable.

## OPINION

PER CURIAM.

STATE OF WEST VIRGINIA SUPREME COURT OF APPEALS FILED SHAWN D. BURNS, November 20, 2013 RORY L. PERRY II, CLERK Claimant Below, Petitioner SUPREME COURT OF APPEALS OF WEST VIRGINIA vs.) No. 12-0266 (BOR Appeal No. 2046252) (Claim No. 2011010175) CHEDDAR'S OPERATIONS, LLC, Employer Below, Respondent MEMORANDUM DECISION Petitioner Shawn D. Burns, by Christopher J. Wallace, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review.

Cheddar's Operations, LLC, by Lynn C. Photiadis, its attorney, filed a timely response. This appeal arises from the Board of Review's Final Order dated February 21, 2012, in which the Board affirmed an August 12, 2011, Order of the Workers' Compensation Office of Judges.

In its Order, the Office of Judges affirmed the claims administrator's October 18, 2010, Order denying Mr. Burns's 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 that the Board of Review's decision was clearly the result of an erroneous conclusion of law. This case satisfies the "limited circumstances" requirement of Rule 21(d) of the Revised Rules of Appellate Procedure and is appropriate for a memorandum decision rather than an opinion.

On September 18, 2010, Mr. Burns was employed as a dishwasher by Cheddar's Operations, LLC, when he sustained injuries after he tripped and fell over either a drain or dishes in the floor. The claims administrator rejected Mr. Burns's claim on the grounds that the evidence did not support that an injury had occurred in the course of and as a result of his employment.

The Office of Judges concluded that there was insufficient evidence to prove that Mr. Burns sustained a compensable injury on September 18, 2010. Mr. Burns disagrees and asserts that his emergency room records show by a preponderance of the evidence that he was diagnosed with conditions of the right hip, right ankle, lumbar spine, thoracic spine, and cervical spine.

1 The evidence of record shows that on September 18, 2010, Jon Ketron, Mr. Burns's manager, prepared a statement, in which he stated that he heard a crash in the dish room and then found Mr. Burns lying on the floor with a couple of pans laying on his ankle. Another manager, Amber

Vaughn, provided the same information in an accident report; she heard a crash and then found Mr. Burns lying on the floor with dishes on him.

Mr. Burns sought medical treatment at Trinity Medical Center on September 19, 2010, and the records indicated an impression of right hip sprain, right ankle sprain, lumbar sprain, thoracic sprain, and cervical sprain. Mr. Burns's ankle was put in an air cast.

On March 25, 2011, Dr. Hennessey conducted an independent medical exam on Mr. Burns and opined that Mr. Burns had made a full recovery from his soft tissue injuries, but that a cervical MRI would be reasonable. On January 26, 2011, Dr. MacPherson testified at deposition that Mr. Burns's x-rays from September 19, 2010, showed degenerative spondylitic changes throughout the cervical spine, degenerative changes in the right hip, mild degenerative spondylitic changes of the dorsal spine, and no evidence of any acute injuries.

The Office of Judges relied on Dr. MacPherson's testimony that Mr. Burns was able to attend two fifty minute classes per day and that he failed to produce any direct evidence indicating that he had sustained an injury.

The Board of Review adopted the findings of the Office of Judges and affirmed its Order. For Mr. Burns's claim to be held compensable under West Virginia Code § 23-4-1(a), he must show (1) a personal injury; (2) received in the course of his employment; and (3) resulting from the employment. Mr. Burns was employed as a dishwasher in a restaurant and was found lying in the kitchen floor with pans on him after a loud crash was heard by his managers.

Mr. Burns sought medical treatment at Trinity Medical Center the following day and was diagnosed with right hip sprain, right ankle sprain, lumbar sprain, thoracic sprain, and cervical sprain and his ankle was placed in an air cast. Dr. Hennessey in an independent medical exam opined that Mr. Burns had made a full recovery from his soft tissue injuries but that a cervical MRI would be reasonable.

This evidence is sufficient to conclude that Mr. Burns was injured while performing his duties in the course of his employment. For the foregoing reasons, we find that the decision of the Board of Review was clearly the result of an erroneous conclusion of law.

Therefore, the decision of the Board of Review is reversed and remanded with a finding of compensability. Reverse and Remand. 2 ISSUED: November 20, 2013 CONCURRED IN BY: Justice Robin J. Davis Justice Margaret L. Workman Justice Allen H. Loughry II DISSENTING: Chief Justice Brent D. Benjamin Justice Menis E. Ketchum 3