

SUPREME COURT OF APPEALS OF WEST VIRGINIA

William M. Savina v. Homer Laughlin China Company

Savina · No. No. 12-1102 (BOR Appeal No. 2046804) (Claim No. 2008022653) · Decided April 2, 2014

SUMMARY

The West Virginia Supreme Court of Appeals affirmed a Workers’ Compensation Board of Review decision awarding William M. Savina 12% permanent partial disability for bilateral carpal tunnel syndrome. The court held that the Board properly relied on the most credible medical opinion and found no clear legal or factual error.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per curiam; 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	April 2, 2014
DOCKET	No. 12-1102 (BOR Appeal No. 2046804) (Claim No. 2008022653)
DISPOSITION	affirmed
PROCEDURAL POSTURE	Claimant appealed the West Virginia Workers’ Compensation Board of Review’s order affirming a decision awarding him 12% permanent partial disability for bilateral carpal tunnel syndrome.
STANDARD OF REVIEW	The Board of Review’s decision is upheld unless it clearly violates a constitutional or statutory provision, is clearly the result of erroneous conclusions of law, or is based on a material misstatement or mischaracterization of the evidentiary record.
PRECEDENTIAL VALUE	Memorandum decision; the opinion states that it is issued under West Virginia Rule of Appellate Procedure 21.
PARTIES	William M. Savina v. Homer Laughlin China Company

TOPICS

- workers compensation
- appellate procedure
- standard of review

PRACTICE AREAS

workers compensation

employment law

administrative law

appellate procedure

QUESTIONS PRESENTED

1. Whether the Workers' Compensation Board of Review properly affirmed a 12% permanent partial disability award for Savina's bilateral carpal tunnel syndrome.
2. Whether the Board of Review's decision was clearly erroneous, legally erroneous, constitutionally or statutorily impermissible, or based on a material misstatement or mischaracterization of the evidentiary record.

HOLDINGS

1. The Board of Review properly affirmed a 12% permanent partial disability award because the preponderance of the evidence supported Dr. Langa's credible medical assessment.
2. A Board of Review decision will be affirmed when it does not clearly violate a constitutional or statutory provision, clearly result from an erroneous conclusion of law, or rest on a material misstatement or mischaracterization of the evidentiary record.

KEY QUOTATIONS

"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." (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." (2)

FACTUAL BACKGROUND

William M. Savina worked as a packer for Homer Laughlin China Company and performed repetitive work for nearly forty years. He developed bilateral carpal tunnel syndrome, underwent surgery in March 2010, and later received conflicting impairment evaluations. One physician found 0% impairment, another found 23%, and Dr. Victoria Langa found 12% impairment using the applicable American Medical Association Guides methodology; the lower tribunals credited Dr. Langa's opinion.

PROCEDURAL HISTORY

The claims administrator granted Savina a 0% permanent partial disability award and closed the claim on a permanent partial disability basis. The Workers' Compensation Office of Judges reversed and awarded 12% impairment, and the Board of Review affirmed that decision on August 30, 2012. The Supreme Court of Appeals reviewed the Board's order and affirmed.

DISPOSITION

affirmed

OPINION

PER CURIAM.

STATE OF WEST VIRGINIA SUPREME COURT OF APPEALS FILED WILLIAM M. SAVINA, April 2, 2014 RORY L. PERRY II, CLERK Claimant Below, Petitioner SUPREME COURT OF APPEALS OF WEST VIRGINIA vs.) No. 12-1102 (BOR Appeal No. 2046804) (Claim No. 2008022653) HOMER LAUGHLIN CHINA COMPANY, Employer Below, Respondent MEMORANDUM DECISION Petitioner William M. Savina, by Patrick K. Maroney, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review.

Homer Laughlin China Company, by Lucinda L. Fluharty, its attorney, filed a timely response. This appeal arises from the Board of Review's Final Order dated August 30, 2012, in which the Board affirmed a December 19, 2011, Order of the Workers' Compensation Office of Judges.

In its Order, the Office of Judges reversed the claims administrator's August 17, 2010, decision granting Mr. Savina a 0% permanent partial disability award and closing the claim on a permanent partial disability basis.

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. Mr. Savina worked as a packer for Homer Laughlin China Company. His employment history shows that he performed repetitious work and maneuvering for nearly forty years.

After years of suffering numbness and tingling in his fingers on both hands, he sought medical attention. On December 5, 2007, Henry Parcinski, D.O., diagnosed him with bilateral carpal tunnel syndrome. Mr. Savina was then referred to a neurologist for further evaluation. Mr. Savina eventually underwent carpal tunnel surgery in March of 2010.

After missing work for three months, Mr. Savina returned to work and was deemed to have reached his maximum degree of medical impairment. 1 On August 12, 2010, Mr. Savina was examined by Sushil M. Sethi, M.D., who concluded that Mr. Savina had a 0% whole person impairment for his bilateral carpal tunnel syndrome. During testing, Dr. Sethi found that Mr. Savina's thenar and hypothenar muscles were normal.

Mr. Savina's range of motion was found to be normal, and both Tinel and Phalen tests were negative. Dr. Sethi did not believe that Mr. Savina was entitled to any impairment based upon his

evaluation. Mr. Savina was then examined by John L. Dunne, D.O., on January 27, 2011. Dr. Dunne found that Mr. Savina suffered from decreased grip strength and sensory loss and had a positive Phalen's maneuver.

Using Table 16 of the American Medical Association's Guides to the Evaluation of Permanent Impairment, (4th ed. 1993), Dr. Dunne opined that Mr. Savina had a 23% whole person impairment for the bilateral carpal tunnel syndrome. Victoria M. Langa, M.D., performed an independent medical examination on June 20, 2011. Using Tables 10-12 and 15 of the American Medical Association's Guides, she found that Mr. Savina had a 0% impairment for his bilateral carpal tunnel syndrome.

Dr. Langa then used Table 16 of the American Medical Association's Guides, which she admitted was not the preferred method for calculating residual permanent partial impairment, and further found that Mr. Savina had a 12% whole person impairment for his bilateral carpal tunnel syndrome. Dr. Langa disagreed with Dr. Dunne's recommendation of a 23% whole person impairment.

Based upon Mr. Savina's full active range of motion and lack of thenar weakness with no sensory deficit, Dr. Langa did not believe that the results support such a recommendation of impairment. The claims administrator granted Mr. Savina a 0% permanent partial disability award and closed the claim on a permanent partial disability basis.

The Office of Judges reversed the claims administrator's decision and held that the preponderance of the evidence establishes that Mr. Savina has a 12% whole person impairment under the American Medical Association's Guides.

The Office of Judges reasoned that Dr. Langa's report was the most credible objective medical opinion in the record. Dr. Langa concluded that Mr. Savina had a 12% whole person impairment for his bilateral carpal tunnel syndrome.

After discrediting the reports of Dr. Sethi and Dr. Dunne, it was concluded that the preponderance of the evidence establishes that Mr. Savina has a 12% whole person impairment for his bilateral carpal tunnel syndrome.

The Board of Review reached the same reasoned conclusion as the Office of Judges in its decision of August 30, 2012. We agree with the reasoning and conclusions of the Board of Review. The Office of Judges correctly determined that Dr. Langa's report was the most credible medical opinion.

The Board of Review and the Office of Judges correctly granted Mr. Savina a 12% permanent partial disability award for bilateral carpal tunnel syndrome. 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. 2 ISSUED: April 2, 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 3

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