

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Kanawha Valley Operations v. Jeffrey Miller

Kanawha Valley Operations · No. No. 13-0663 · Decided October 7, 2014

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed a Board of Review decision awarding Jeffrey Miller an additional 4% permanent partial disability for a left shoulder injury, for a total award of 7%. The court held that the medical evaluation supporting the 7% impairment was reliable and that the Board properly denied the employer’s motion to remand for consideration of additional evidence.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per curiam; Robin J. Davis; Brent D. Benjamin; Margaret L. Workman; Menis E. Ketchum; Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	October 7, 2014
DOCKET	No. 13-0663
DISPOSITION	affirmed
PROCEDURAL POSTURE	Employer appealed the West Virginia Workers’ Compensation Board of Review’s final order affirming an Office of Judges order that increased the claimant’s permanent partial disability award from 3% to 7%.
STANDARD OF REVIEW	The Board of Review’s decision is upheld unless it clearly violates 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 denial of the motion to remand for additional evidence under that standard.
PRECEDENTIAL VALUE	Nonprecedential memorandum decision
PARTIES	Kanawha Valley Operations of West Virginia v. Jeffrey Miller

TOPICS

- workers compensation
- administrative law
- appellate procedure
- standard of review

PRACTICE AREAS

Workers compensation

Administrative law

Appellate procedure

QUESTIONS PRESENTED

1. Whether the Board of Review properly affirmed an award of 7% permanent partial disability based on Dr. Guberman's evaluation.
2. Whether the Board of Review properly denied the employer's motion to remand for consideration of Dr. Bachwitt's evaluation.

HOLDINGS

1. The Board of Review properly affirmed the Office of Judges' determination that Miller was entitled to a total 7% permanent partial disability award for his left shoulder injury because Dr. Guberman's sufficiently reliable evaluation was the only disability evidence submitted into the record.
2. The Board of Review properly denied the employer's motion to remand because the employer did not show good cause for submitting additional evidence after having ten months to submit evidence and failing to participate in the litigation.

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.” (2)

FACTUAL BACKGROUND

Jeffrey Miller, a crew leader for Kanawha Valley Operations, injured his left knee and left shoulder on November 18, 2011, while jumping out of the way of a moving vehicle. The claims administrator held the injury compensable and awarded 3% permanent partial disability based on Dr. Paul Bachwitt's independent medical evaluation. Dr. Bruce Guberman later diagnosed chronic post-traumatic strain of the left shoulder and assessed 7% whole person impairment under the American Medical Association's Guides to the Evaluation of Permanent Impairment. Dr. Guberman's evaluation was the only disability evidence submitted into the record.

PROCEDURAL HISTORY

The claims administrator granted Jeffrey Miller a 3% permanent partial disability award for his compensable left shoulder injury. The Workers' Compensation Office of Judges reversed and awarded an additional 4%, for a total 7% award, based on Dr. Bruce Guberman's evaluation. The Board of Review affirmed, denied the employer's motion to remand for consideration of Dr. Paul Bachwitt's evaluation, and the Supreme Court of Appeals affirmed the Board.

DISPOSITION

affirmed

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