

SUPREME COURT OF APPEALS OF WEST VIRGINIA

John Bego Sr. v. Bayer CropScience LP

Bego · No. No. 19-0300 · Decided July 9, 2020

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the Board of Review’s denial of John Bego Sr.’s application for occupational hearing loss benefits. The court held that the evidence supported the conclusion that the progression of his hearing loss after November 1, 2006, was not occupationally caused. The court issued the decision as a memorandum decision under Rule 21 of the West Virginia Rules of Appellate Procedure.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Tim Armstead; Justice Elizabeth D. Walker; Justice Evan H. Jenkins; Justice John A. Hutchison; Justice Margaret L. Workman
JURISDICTION	West Virginia
DECIDED	July 9, 2020
DOCKET	No. 19-0300
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner appealed the West Virginia Workers’ Compensation Board of Review’s affirmance of the denial of his application for occupational hearing loss benefits.
STANDARD OF REVIEW	The court reviews the Board of Review’s decision for clear violation of a constitutional or statutory provision, clearly erroneous conclusions of law, or a material misstatement or mischaracterization of the evidentiary record.
PRECEDENTIAL VALUE	published memorandum decision
PARTIES	John Bego Sr. v. Bayer CropScience LP

TOPICS

workers compensation

appellate procedure

standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the evidence established that the progression of Bego's hearing loss after November 1, 2006, was occupational hearing loss compensable under workers' compensation.
2. Whether the Workers' Compensation Board of Review's affirmance of the denial of benefits was clearly erroneous, legally invalid, or based on a material misstatement or mischaracterization of the evidence.

HOLDINGS

1. Bego failed to establish that the progression of his hearing loss after November 1, 2006, was due to occupational hearing loss.
2. The Board of Review's decision was not in clear violation of a constitutional or statutory provision, was not clearly the result of erroneous conclusions of law, and was not based on a material misstatement or mischaracterization of the evidentiary record.

KEY QUOTATIONS

"The evidence of record supports the claims administrator's decision that Mr. Bego has failed to establish that the progression of his hearing loss after November 1, 2006, is due to occupational hearing loss." (3)

"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." (3)

FACTUAL BACKGROUND

John Bego worked for Bayer CropScience and its predecessor beginning in 1976 in a very loud work environment, despite using earplugs. He had previously received a 2.2% permanent partial disability award for occupational hearing loss in 2004. In 2017, Dr. Katrib attributed additional bilateral sensorineural hearing loss to occupational noise exposure and assessed 19.61% impairment, while Drs. Phillips and Pollard concluded that the pattern and progression of the hearing loss, including conductive loss in the right ear and flat loss in the left ear, were not consistent with occupational noise-induced hearing loss.

PROCEDURAL HISTORY

The claims administrator denied Bego's application on June 16, 2017, finding that his current hearing loss was not consistent with occupational hearing loss. The Office of Judges affirmed on October 29, 2018, and the Board of Review affirmed on March 5, 2019. The Supreme Court of Appeals reviewed the Board's final order and affirmed.

DISPOSITION

affirmed

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