

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Antoinette M. Bee v. Kanawha Hospice Care, Inc.

Bee v. Kanawha Hospice Care · No. No. 18-0013 · Decided May 21, 2018

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed an 8% permanent partial disability award to Antoinette M. Bee for a compensable lumbar sprain. The court held that the independent medical evaluator properly applied the impairment guidelines in West Virginia Code of State Rules § 85-20-C and found no clear legal or factual error in the Board of Review's decision.

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. 18-0013
DISPOSITION	affirmed
PROCEDURAL POSTURE	Claimant appealed the West Virginia Workers' Compensation Board of Review's affirmance of an 8% permanent partial disability award.
STANDARD OF REVIEW	The Board of Review's decision was affirmed unless it 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
PARTIES	Antoinette M. Bee v. Kanawha Hospice Care, Inc.

TOPICS

judicial review of agency action

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 8% permanent partial disability award based on the impairment-category limits in West Virginia Code of State Rules § 85-20-C.
2. Whether reliance on the impairment tables in West Virginia Code of State Rules § 85-20-C was improper because Bee's whole-person impairment assessment was higher than the awarded percentage.

HOLDINGS

1. The award was proper because the medical evaluator followed the applicable impairment guidelines, classified Bee under lumbar category II, and reduced the assessed impairment to the range authorized by § 85-20-C.
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

“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

Bee, a nurse, injured her low back while bending over to care for a patient, and her claim was held compensable for a lumbar-spine ligament sprain. An MRI showed a broad-based disc extrusion at L3-L4. An independent medical evaluator assessed 11% whole-person impairment, classified Bee under lumbar category II of West Virginia Code of State Rules § 85-20-C, and adjusted the impairment to 8% under that category's 5% to 8% range.

PROCEDURAL HISTORY

The claims administrator granted Bee an 8% permanent partial disability award on August 26, 2016. The Office of Judges affirmed on September 1, 2017, and the Board of Review affirmed that decision on December 28, 2017. The Supreme Court of Appeals reviewed the Board's decision and affirmed it.

DISPOSITION

affirmed

CASES CITED

- Simpson v. West Virginia Office of Ins. Comm’r., 223 W.Va. 495, 678 S.E.2d 1 (2009)