

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Delores Turner v. Cornerstone Building Brands

No. 21-0593 (BOR Appeal No. 2056692) (Claim No. 2020003410) · No. No. 21-0593 (BOR Appeal No. 2056692) (Claim No. 2020003410) · Decided February 10, 2023

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the Board of Review’s decision concerning Delores Turner’s request for authorization of an MRI arthrogram for a compensable shoulder injury. The court held that the issue was moot because Turner underwent shoulder surgery without obtaining the requested diagnostic study. The court found no substantial question of law or prejudicial error and affirmed the Board’s order.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; Chief Justice Elizabeth D. Walker; Justice Tim Armstead; Justice John A. Hutchison; Justice William R. Wooton; Justice C. Haley Bunn
JURISDICTION	West Virginia
DECIDED	February 10, 2023
DOCKET	No. 21-0593 (BOR Appeal No. 2056692) (Claim No. 2020003410)
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner's appeal from the West Virginia Workers’ Compensation Board of Review's affirmance of the Office of Judges' dismissal as moot of a request for authorization of an MRI arthrogram.
STANDARD OF REVIEW	Under W. Va. Code § 23-5-15, the Court gives deference to the Board of Review's findings, reasoning, and conclusions and may not conduct a de novo reweighing of the evidentiary record when the Board affirmed prior rulings on the same issue. Reversal or modification is permitted in those circumstances only for a clear violation of a constitutional or statutory provision, clearly erroneous conclusions of law, or a material misstatement or mischaracterization of the evidentiary record. Questions of law arising from Board decisions are reviewed de novo.
PRECEDENTIAL VALUE	Published memorandum decision; the opinion states that a memorandum decision is appropriate under Rule 21 of the West

Virginia Rules of Appellate Procedure.

PARTIES

Delores Turner v. Cornerstone Building Brands

TOPICS

workers compensation

mootness

standard of review

appellate procedure

administrative law

PRACTICE AREAS

workers compensation

administrative law

appellate procedure

QUESTIONS PRESENTED

1. Whether the request for authorization of an MRI arthrogram was moot after Turner underwent shoulder surgery without waiting for the arthrogram.
2. What standard of review governs the Supreme Court of Appeals' review of the Board of Review's decision.

HOLDINGS

1. The request for authorization of the MRI arthrogram was moot because the diagnostic study was intended to determine whether surgery was necessary, and Turner underwent the surgery before the arthrogram was performed.
2. The Court reviews questions of law arising from Board of Review decisions de novo, while deferring to the Board's findings, reasoning, and conclusions and refraining from de novo reweighing of the evidentiary record under the circumstances specified in W. Va. Code § 23-5-15.

KEY QUOTATIONS

"The court may not conduct a de novo reweighing of the evidentiary record" (at 1)

"Because the surgical procedure was actually performed without the requested MRI arthrogram, the issue is clearly moot." (at 3)

FACTUAL BACKGROUND

Turner injured her left shoulder while lifting windows at work on July 8, 2019, and the claim was accepted for an unspecified left shoulder joint sprain. After an unremarkable MRI and an independent medical evaluation finding no rotator cuff tear or indication for arthroscopy, her treating physician requested authorization for an MRI arthrogram to determine whether surgery was necessary. The claims administrator denied the request, but before the issue was resolved Turner underwent subacromial decompression and labral repair. Because the surgery had already occurred without the requested diagnostic study, the lower tribunals concluded that the request was moot.

PROCEDURAL HISTORY

The claims administrator denied authorization for an MRI arthrogram of Turner's left shoulder. The Office of Judges concluded that the request was moot because Turner underwent shoulder surgery without waiting for the arthrogram and dismissed the issue. The Board of Review adopted the Office of Judges' findings and affirmed, and the Supreme Court of Appeals affirmed the Board's order.

DISPOSITION

affirmed

CASES CITED

- Hammons v. W. Va. Off. of Ins. Comm'r, 235 W. Va. 577, 582-83, 775 S.E.2d 458, 463-64 (2015)
- Justice v. West Virginia Office Insurance Commission, 230 W. Va. 80, 83, 736 S.E.2d 80, 83 (2012)
- Davies v. W. Va. Off. of Ins. Comm'r, 227 W. Va. 330, 334, 708 S.E.2d 524, 528 (2011)

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