

SUPREME COURT OF APPEALS OF WEST VIRGINIA

William Wilson v. Automated Packaging Systems, Inc.

Wilson v. Automated Packaging Systems · No. 14-0875 · Decided February 4, 2016

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed a decision awarding William Wilson 0% permanent partial disability benefits for a compensable lumbar strain sustained while lifting a scrap metal bin at work. The court concluded that the medical evidence supported the claims administrator's determination and that the lower tribunals did not commit clear legal or factual error.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; Chief Justice Menis E. Ketchum; Justice Robin J. Davis; Justice Brent D. Benjamin; Justice Margaret L. Workman; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	February 4, 2016
DOCKET	14-0875
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner's appeal from the West Virginia Workers' Compensation Board of Review's final order affirming a 0% permanent partial disability award.
STANDARD OF REVIEW	The Court reviewed 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	Memorandum decision; no reporter citation appears in the source.
PARTIES	William Wilson v. Automated Packaging Systems, Inc.

TOPICS

workers compensation

administrative law

appellate procedure

standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Workers' Compensation Board of Review erred by affirming a 0% permanent partial disability award for Wilson's compensable lumbar injury.
2. Whether the uncontradicted medical evaluation supported placing Wilson in a higher impairment category under West Virginia Code of State Rules section 85-20-C.

HOLDINGS

1. The Board of Review did not err in affirming a 0% permanent partial disability award because the only medical evidence of record, Dr. Grady's report, supported a finding of no ratable impairment and was not effectively rebutted by credible evidence.
2. The Board of Review's decision must be affirmed when it does not clearly violate a constitutional or statutory provision, rest on clearly erroneous conclusions of law, or materially misstate or mischaracterize 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 Wilson, a machine operator, felt lower-back pain on August 6, 2012, while helping another employee lift and turn a scrap metal bin. His compensable condition was identified as a lumbar strain with S1 joint dysfunction. Dr. Joseph E. Grady found inconsistent range-of-motion measurements, no specific ratable criteria under the applicable impairment guidelines, and no basis for placing Wilson above Lumbar Category I under West Virginia Code of State Rules section 85-20-C. The claims administrator therefore awarded 0% permanent partial disability, and the reviewing tribunals relied on Dr. Grady's uncontradicted medical report.

PROCEDURAL HISTORY

The claims administrator awarded William Wilson 0% permanent partial disability for his compensable lumbar injury. The Workers' Compensation Office of Judges affirmed that decision, and the Board of Review affirmed the Office of Judges. Wilson appealed to the Supreme Court of Appeals of West Virginia, which affirmed the Board's final order.

DISPOSITION

affirmed

OPINION

PER CURIAM.

STATE OF WEST VIRGINIA FILED SUPREME COURT OF APPEALS February 4, 2016
RORY L. PERRY II, CLERK SUPREME COURT OF APPEALS WILLIAM WILSON, OF
WEST VIRGINIA Claimant Below, Petitioner vs.) No. 14-0875 (BOR Appeal No. 2049532)
(Claim No. 2013004261) AUTOMATED PACKAGING SYSTEMS, INC., Employer Below,
Respondent MEMORANDUM DECISION Petitioner William Wilson, by William B. Gerwig III,
his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review.

Automated Packaging Systems, Inc., by Maureen Kowalski, its attorney, filed a timely response. This appeal arises from the Board of Review's Final Order dated August 26, 2014, in which the Board affirmed a June 13, 2014, Order of the Workers' Compensation Office of Judges.

In its Order, the Office of Judges affirmed the claims administrator's May 21, 2013, decision to grant Mr. Wilson a 0% permanent partial disability award. 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. Wilson a machine operator for Automated Packaging Systems, Inc., helped another employee lift a scrap metal bin on August 6, 2012. While lifting and turning he felt pain in his lower back. Mr. Wilson did not report the injury that day but sought treatment shortly thereafter.

On May 14, 2013, a report from Joseph E. Grady II, M.D., was completed. Dr. Grady stated that the compensable condition was a lumbar strain with S1 joint dysfunction. An x-ray performed on August 7, 2012, showed mild diffuse arthritis. An MRI was performed, which showed spinal 1 stenosis. No back surgery was recommended but physical therapy was performed, and it provided Mr. Wilson with some relief.

On December 17, 2012, Mr. Wilson was released to return to work. Dr. Grady performed a range-of-motion exam on his low back. He stated that the ranges of motion were at least partially inhibited due to complaints of discomfort. Dr. Grady also felt that the measurements were inconsistent. Mr. Wilson was able to bend over to pick up items he dropped from his pocket in the exam room but was unable to do so when Dr. Grady was measuring his disability.

Dr. Grady advised that Mr. Wilson was able to squat, but had difficulty due to discomfort in his low back. He also noted some diffuse tenderness to palpation in his lumbosacral paraspinal muscle

on the left but not right.

Under Table 75, of the American Medical Association's Guides to the Evaluation of Permanent Impairment (4th ed. 1993), Dr. Grady found no specific ratable criteria from this injury. He found a total of 2% impairment for right and left lateral flexion of the lumbar spine. Dr. Grady placed Mr. Wilson in Lumbar Category I of West Virginia Code of State Rules § 85-20-C (2006), because there was no ratable criteria that would justify placing Mr. Wilson in a higher category for his lumbar injury.

Thus he found that there was no impairment for this injury. On May 21, 2013, the claims administrator adopted Dr. Grady's conclusions and granted Mr. Wilson a 0% permanent partial disability award. The Office of Judges determined that Mr. Wilson was not entitled to any more than a 0% permanent partial disability award.

The Office of Judges noted that the only medical evidence in the record was the report of Dr. Grady. The Office of Judges recognized Mr. Wilson's argument that Dr. Grady should have placed him in Category II of West Virginia Code of State Rules § 85 20-C instead of Category I. However, the Office of Judges was not persuaded by Mr. Wilson's argument.

The Office of Judges found that Dr. Grady considered placing Mr. Wilson in Category II of West Virginia Code of State Rules § 85-20-C but could not find a reason to do so. Because Dr. Grady's evaluation provided the only medical opinion and it was not contradicted by credible evidence, the Office of Judges accepted his conclusions.

The Board of Review adopted the findings of the Office of Judges and affirmed its Order. We agree with the consistent decisions of the Office of Judges and the Board of Review. The only medical evidence of record was Dr. Grady's report. Dr. Grady's well-reasoned report demonstrated that Mr. Wilson was not entitled to any more than a 0% permanent partial disability award.

Because Mr. Wilson has not provided sufficient credible evidence to show that Dr. Grady's report was deficient, it was not in error for the Office of Judges and Board of Review to adopt his position. 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: February 4, 2016 CONCURRED IN BY: Chief Justice Menis E. Ketchum Justice Robin J. Davis Justice Brent D. Benjamin Justice Margaret L. Workman Justice Allen H. Loughry II 3