

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Cecil R. Evans v. Bradley Public Service District

No. No. 15-0244 (BOR Appeal No. 2049844) (Claim No. 2010113413), Supreme Court of Appeals of West Virginia (February 4, 2016)

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed a Board of Review decision awarding Cecil R. Evans a total of 16% permanent partial disability for compensable injuries sustained in a workplace automobile accident. The court held that cervical spine conditions were not compensable and that the impairment assessment supporting the additional 6% award was reliable. The decision was issued as a per curiam 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 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	No. 15-0244 (BOR Appeal No. 2049844) (Claim No. 2010113413)
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner's appeal from the West Virginia Workers' Compensation Board of Review's final order affirming the Office of Judges' modification of a claims administrator's permanent partial disability award.
STANDARD OF REVIEW	The Court affirmed unless the Board of Review's decision violated a constitutional or statutory provision, resulted from erroneous conclusions of law, or was based on a material misstatement or mischaracterization of the evidentiary record.
PRECEDENTIAL VALUE	Memorandum decision; the source does not provide a reporter citation or separately state precedential status.
PARTIES	Cecil R. Evans v. Bradley Public Service District

TOPICS

workers compensation

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standard of review

PRACTICE AREAS

workers compensation

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QUESTIONS PRESENTED

1. Whether Evans was entitled to additional permanent partial disability benefits based on cervical-spine impairment.
2. Whether the Board of Review properly affirmed the determination that the most reliable medical evaluation supported a total 16% permanent partial disability award.

HOLDINGS

1. Because the cervical spine condition was not a compensable component of the claim, Evans could not receive a permanent partial disability award for cervical-spine impairment.
2. The Board of Review properly affirmed a total permanent partial disability award of 16%, including the previously granted 10% award and an additional 6% award.
3. An appellate court will not disturb the Board of Review's decision absent a constitutional or statutory violation, an erroneous conclusion of law, or a material misstatement or mischaracterization of the evidentiary record.

KEY QUOTATIONS

“The cervical spine is not a compensable condition in the claim, and Mr. Evans therefore cannot be granted a permanent partial disability award for a cervical spine condition.” (3)

“The evidence indicates that Mr. Evans sustained 16% impairment as a result of the compensable injury.” (3)

FACTUAL BACKGROUND

Evans, a wastewater treatment plant worker, was injured in a November 6, 2009 automobile accident arising in the course of his employment. The claim was held compensable for facial, scalp, and neck contusions and a fracture of the right talus, while cervical spondylosis and related disc conditions were not added as compensable components. Medical evaluations assigned varying impairment ratings, and the claims administrator ultimately awarded Evans an additional 6% permanent partial disability, producing a total award of 16% based principally on right-ankle and left-shoulder impairment.

PROCEDURAL HISTORY

The claims administrator initially granted Evans a 10% permanent partial disability award for right-ankle and left-shoulder impairment, and later granted an additional 6%. The Office of Judges modified the later decision to clarify that Evans was entitled to an additional 6%, for a total award of 16%, while rejecting impairment attributable to the cervical spine because that condition was not compensable. The Board of Review affirmed, and the Supreme Court of Appeals affirmed the Board's order.

DISPOSITION

affirmed

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