

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Frederick G. Stollings v. Apogee Coal Co.

Stollings · No. No. 16-0179 · Decided February 3, 2017

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed a decision awarding Frederick G. Stollings 7% permanent partial disability benefits for a compensable spinal injury. The court held that the medical evaluator's impairment recommendation did not patently deviate from the applicable American Medical Association Guides, while the competing evaluation was invalid because it apportioned pre-existing impairment at the wrong stage of the analysis.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Allen H. Loughry II; Justice Robin J. Davis; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Elizabeth D. Walker
JURISDICTION	West Virginia
DECIDED	February 3, 2017
DOCKET	No. 16-0179
DISPOSITION	affirmed
PROCEDURAL POSTURE	Claimant appealed the West Virginia Workers' Compensation Board of Review's affirmance of an Office of Judges order awarding him 7% permanent partial disability benefits.
STANDARD OF REVIEW	The Board of Review's decision will be affirmed unless it violates a constitutional or statutory provision, rests on erroneous conclusions of law, or is based on a material misstatement or mischaracterization of the evidentiary record.
PRECEDENTIAL VALUE	Published memorandum decision; the opinion states that it is issued under Rule 21 and finds no substantial question of law.
PARTIES	Frederick G. Stollings v. Apogee Coal Company

TOPICS

workers compensation

appellate procedure

administrative law

standard of review

PRACTICE AREAS

workers compensation

administrative law

appellate procedure

QUESTIONS PRESENTED

1. Whether the Board of Review properly affirmed a 7% permanent partial disability award based on Dr. Mir's evaluation despite his not using Table 75 of the American Medical Association's Guides.
2. Whether Dr. Guberman's impairment recommendation was invalid because he apportioned for pre-existing conditions before applying West Virginia Code of State Rules § 85-20.
3. Whether the Board of Review's decision violated a constitutional or statutory provision, resulted from an erroneous conclusion of law, or was based on a material misstatement or mischaracterization of the evidentiary record.

HOLDINGS

1. Dr. Mir's recommendation was sufficient because his decision not to use Table 75 did not constitute a patent deviation from the American Medical Association's Guides or the Court's prior rulings.
2. Dr. Guberman's recommendation was invalid because he apportioned for pre-existing conditions before applying West Virginia Code of State Rules § 85-20.
3. The Board of Review's decision affirming a 7% permanent partial disability award was affirmed.

KEY QUOTATIONS

"This Court has previously held that pre-existing impairments must be apportioned for after applying the tables in West Virginia Code of State Rules §85-20." (at 2)

"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." (at 3)

FACTUAL BACKGROUND

Stollings sustained a compensable back injury when he backed a dozer off a coal pile. Imaging showed anterior subluxation at L5-S1, likely related to pre-existing bilateral pars defects and degenerative disc disease, as well as slight decreases in the heights of T10 and T11. Dr. Mir calculated 7% whole-person impairment after accounting for pre-existing conditions without using Table 75 of the American Medical Association's Guides, while Dr. Guberman calculated 14% impairment using Table 75 but apportioned for pre-existing conditions before applying West Virginia Code of State Rules § 85-20. The workers' compensation tribunals ultimately accepted Dr. Mir's 7% recommendation and rejected Dr. Guberman's methodology.

PROCEDURAL HISTORY

The claims administrator initially granted Stollings a 7% permanent partial disability award based on Dr. Saghir Mir's evaluation. The Office of Judges initially reversed that decision and awarded 14% based on Dr. Bruce Guberman's evaluation, but the Board of Review remanded for additional evidence. After depositions of both

physicians, the Office of Judges vacated its prior order and restored the 7% award, and the Board of Review affirmed. The Supreme Court of Appeals affirmed the Board's final order.

DISPOSITION

affirmed

CASES CITED

- SWVA, Inc. v. Edward Birch, 237 W. Va. 393, 787 S.E.2d 664 (2016)

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/west-virginia-supreme-court-of-appeals-of-west-virginia/2017/frederick-g-stollings-v-apogee-coal-co-wwbh6mm8>