

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Lowe's Home Centers, Inc. of West Virginia v. Augustine Cortez

No. 13-1075 (BOR Appeal No. 2048332) (Claim No. 2012021279) · No. No. 13-1075 · Decided December 2, 2014

SUMMARY

The West Virginia Supreme Court of Appeals affirmed a Workers' Compensation Board of Review decision adding a herniated disc, intervertebral disc disorder, and retrolisthesis as compensable conditions arising from Augustine Cortez's workplace injury. The court also upheld authorization for arthrodesis surgery to treat those conditions. The court concluded that the evidentiary record supported the findings and that no clear legal or constitutional error warranted reversal.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; Chief Justice Robin J. Davis; Justice Brent D. Benjamin; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	December 2, 2014
DOCKET	No. 13-1075
DISPOSITION	affirmed
PROCEDURAL POSTURE	Employer appealed the West Virginia Workers' Compensation Board of Review's order affirming the Office of Judges' decision that added medical conditions to the claim and authorized arthrodesis surgery.
STANDARD OF REVIEW	The Board of Review's decision is affirmed unless it clearly violates a constitutional or statutory provision, is clearly the result of erroneous conclusions of law, or is based upon a material misstatement or mischaracterization of the evidentiary record.
PRECEDENTIAL VALUE	Published memorandum decision; no separate precedential designation stated in the opinion
PARTIES	Lowe's Home Centers, Inc. of West Virginia v. Augustine Cortez

TOPICS

workers compensation

administrative law

appellate procedure

standard of review

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the evidence supported adding an L2-3 herniated disc, intervertebral disc disorder, and retrolisthesis as compensable conditions resulting from Cortez's workplace injury.
2. Whether arthrodesis surgery was medically related and reasonably required to treat the compensable injury.

HOLDINGS

1. The evidence sufficiently demonstrated that Cortez suffered a herniated disc, intervertebral disc disorder, and retrolisthesis in the course of and resulting from his employment, and that the conditions were related to the compensable injury rather than his preexisting back problems.
2. The requested arthrodesis surgery was medically related and reasonably required to treat Cortez's compensable injury.

KEY QUOTATIONS

"We agree with the conclusions of the Board of Review and the findings of the Office of Judges." (at 2)

"Mr. Cortez has presented sufficient evidence to demonstrate that he suffered a herniated disc, intervertebral disc disorder, and retrolisthesis in the course of and resulting from his employment." (at 2)

"Mr. Cortez has also demonstrated that the requested arthrodesis surgery is medically related and reasonably required to treat his compensable injury." (at 2)

FACTUAL BACKGROUND

On December 31, 2011, Augustine Cortez injured his lower back while kneeling and moving boxes of laminate flooring for Lowe's. Although he had preexisting lumbar problems and prior fusion surgery at L3-4 and L4-5, imaging after the workplace incident showed an L2-3 disc herniation that was not present on a prior MRI, along with retrolisthesis. His treating physician recommended and performed L2-3 fusion surgery after conservative treatment failed, and treatment notes indicated that the surgery significantly reduced his pain.

PROCEDURAL HISTORY

The claims administrator initially held the claim compensable for a lumbar sprain, denied adding additional spinal conditions, and denied authorization for arthrodesis surgery. The Workers' Compensation Office of Judges added herniated disc, intervertebral disc disorder, and retrolisthesis as compensable conditions and authorized the surgery. The Board of Review affirmed, and the Supreme Court of Appeals affirmed the Board's decision.

DISPOSITION

affirmed

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