

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Anne Davis v. Dolgencorp, LLC

No. 13-1162 (BOR Appeal No. 2048338; Claim No. 2012002879) · No. No. 13-1162 · Decided January 20, 2015

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the denial of Anne Davis’s request to add herniated thoracic and lumbar discs as compensable components of her workers’ compensation claim. The court concluded that the disc herniations were attributable to pre-existing degenerative changes rather than her work-related lumbar and thoracic sprains.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Margaret L. Workman; Justice Robin J. Davis; Justice Brent D. Benjamin; Justice Menis E. Ketchum; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	January 20, 2015
DOCKET	No. 13-1162
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner's appeal from the West Virginia Workers' Compensation Board of Review's order affirming the denial of her request to add herniated lumbar and thoracic discs as compensable components of her workers' compensation claim.
STANDARD OF REVIEW	The court reviewed whether 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; no reporter citation appears in the source.
PARTIES	Anne Davis v. Dolgencorp, LLC

TOPICS

workers compensation

judicial review of agency action

administrative law

appellate procedure

standard of review

PRACTICE AREAS

Workers' compensation

Administrative law

Appellate procedure

QUESTIONS PRESENTED

1. Whether the herniated lumbar and thoracic discs should be added as compensable components of Davis's workers' compensation claim.
2. Whether the Board of Review's affirmance of the denial was clearly erroneous or otherwise defective under the applicable standard of review.

HOLDINGS

1. The herniated lumbar and thoracic discs were not compensable components of Davis's claim because the evidentiary record showed that they resulted from pre-existing degenerative changes rather than the July 23, 2011, work-related injury.
2. The Board of Review's decision was affirmed because it did not clearly violate a constitutional or statutory provision, result from erroneous conclusions of law, or rest on a material misstatement or mischaracterization of the evidentiary record.

KEY QUOTATIONS

“The evidentiary record indicates that Ms. Davis sustained lumbar and thoracic sprains in the course of her employment on July 23, 2011, and that the herniated lumbar and thoracic discs are the result of pre-existing degenerative changes and not the work-related injury.” (at 3)

“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

Davis sustained lumbar and thoracic sprains while stocking merchandise at work on July 23, 2011. Subsequent MRI studies showed herniated discs and degenerative changes in the thoracic and lumbar spine, and she sought to add the herniated discs as compensable conditions. Medical reviewers concluded that the disc findings were pre-existing degenerative changes rather than consequences of the work injury, and surveillance evidence also contradicted the severity of Davis's reported limitations.

PROCEDURAL HISTORY

The claims administrator denied Davis's request to add herniated lumbar and thoracic discs to her claim on July 19, 2012. The Workers' Compensation Office of Judges affirmed that decision on March 28, 2013, and the Board

of Review affirmed on October 23, 2013. The Supreme Court of Appeals of West Virginia affirmed the Board's final order.

DISPOSITION

affirmed

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