

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Robert L. Lewis v. Laurel Coal Corporation

Lewis v. Laurel Coal Corporation · No. No. 12-0354; BOR Appeal No. 2046204; Claim No. 2009088934 ·
Decided June 11, 2014

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the Workers’ Compensation Board of Review’s decision denying Robert L. Lewis an additional permanent partial disability award for a lower back injury. The court concluded that the prior 13% award fully compensated his impairment and that the Board’s decision was not legally or factually erroneous.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	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	June 11, 2014
DOCKET	No. 12-0354; BOR Appeal No. 2046204; Claim No. 2009088934
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner's appeal from the West Virginia Workers' Compensation Board of Review's final order affirming the Office of Judges' order, which affirmed the claims administrator's denial of an additional permanent partial disability award.
STANDARD OF REVIEW	The Board of Review's decision will not be disturbed unless it is in clear violation of a constitutional or statutory provision, clearly results from erroneous conclusions of law, or is based on a material misstatement or mischaracterization of the evidentiary record.
PRECEDENTIAL VALUE	Memorandum decision; no reporter citation appears in the opinion text
PARTIES	Robert L. Lewis v. Laurel Coal Corporation

TOPICS

- workers compensation
- appellate procedure
- administrative law
- standard of review

PRACTICE AREAS

workers compensation

administrative law

appellate procedure

QUESTIONS PRESENTED

1. Whether Lewis was entitled to an additional permanent partial disability award for his 2009 lower-back injury despite his prior 13% award for a lower-back impairment.
2. Whether the Workers' Compensation Board of Review's decision affirming denial of an additional award was clearly erroneous under the applicable standard of review.

HOLDINGS

1. Lewis was not entitled to an additional permanent partial disability award because the prior 13% award fully compensated his lower-back impairment.
2. The Board of Review's decision was not in clear violation of a constitutional or statutory provision, was not clearly the result of erroneous conclusions of law, and was not based on a material misstatement or mischaracterization of the evidentiary record.

KEY QUOTATIONS

“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

Lewis injured his lower back while working for Laurel Coal Corporation on April 23, 2009. He had previously injured the same area and received a 13% permanent partial disability award in an earlier claim. Although Dr. Bruce Guberman opined that Lewis was entitled to an additional 10% award, Drs. Prasadarao Mukkamala and Anbu Nadar concluded that the prior 13% award fully compensated his lower-back impairment.

PROCEDURAL HISTORY

After Lewis sustained a lower-back injury while working for Laurel Coal Corporation, the claims administrator granted no additional permanent partial disability award. The Workers' Compensation Office of Judges affirmed that decision on July 6, 2011, and the Board of Review affirmed on February 17, 2012. Lewis 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 June 11, 2014 RORY L. PERRY II, CLERK SUPREME COURT OF APPEALS ROBERT L. LEWIS, OF WEST VIRGINIA Claimant Below, Petitioner vs.) No. 12-0354 (BOR Appeal No. 2046204) (Claim No. 2009088934) LAUREL COAL CORPORATION, Employer Below, Respondent MEMORANDUM DECISION Petitioner Robert L. Lewis, by Robert Williams, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review.

Laurel Coal Corporation, by Timothy Huffman, its attorney, filed a timely response. This appeal arises from the Board of Review's Final Order dated February 17, 2012, in which the Board affirmed a July 6, 2011, Order of the Workers' Compensation Office of Judges.

In its Order, the Office of Judges affirmed the claims administrator's December 29, 2009, decision which granted no additional permanent partial disability award for Mr. Lewis's lower back injury. 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. Lewis injured his lower back while working for Laurel Coal Corporation on April 23, 2009. He previously injured his lower back and received a 13% permanent partial disability award in the earlier claim. Based on a report by Anbu Nadar, M.D., the claims administrator granted Mr. Lewis a 0% permanent partial disability award for the lower back injury.

The Office of Judges affirmed the claims administrator's decision, and held that Mr. Lewis is not entitled to an additional permanent partial disability award, because he was fully 1 compensated by the prior 13% award.

On appeal, Mr. Lewis asserts that he is entitled to a 10% additional permanent partial disability award per the report of Bruce Guberman, M.D. Laurel Coal Corporation maintains that he has been fully compensated by the prior award.

On July 28, 2010, Dr. Guberman found that despite the previous 13% permanent partial disability award for the lower back, under West Virginia Code of State Rules § 85-20-Table C (2006), Mr. Lewis was entitled to a 10% permanent partial disability award in this claim. Prasadarao Mukkamala, M.D., disagreed on September 2, 2010, and found that Mr. Lewis was fully compensated for his impairment in the lower back by the prior permanent partial disability award.

In affirming the claims administrator's decision, the Office of Judges found that the preponderance of the evidence did not establish that Mr. Lewis was entitled to an additional permanent partial disability award for the lower back. It noted that Dr. Guberman's method essentially allows Mr. Lewis to double dip when he was fully compensated by a prior award.

The Office of Judges held that the reports of Drs. Mukkamala and Nadar were reliable. The Board of Review reached the same reasoned conclusions in its decision of February 17, 2012. We agree with the reasoning and conclusions of the Board of Review.

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. ISSUED: June 11, 2014
CONCURRED IN BY: Chief Justice Robin J. Davis Justice Brent D. Benjamin Justice Margaret L. Workman Justice Menis E. Ketchum Justice Allen H. Loughry II 2