

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Noretta Mobley, Widow of Samuel Mobley v. West Virginia Office of Insurance Commissioner/Pittston Coal

No. 11-0842 (BOR Appeal No. 2045204) (Claim No. 2008044194) · No. No. 11-0842 · Decided February 20, 2013

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the denial of Noretta Mobley's application for dependent's workers' compensation benefits following the death of Samuel Mobley. The court held that the evidence did not establish that Samuel was exposed to an occupational pneumoconiosis hazard or that occupational pneumoconiosis contributed materially to his death. The court issued the decision as a 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 Brent D. Benjamin; Justice Robin J. Davis; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	February 20, 2013
DOCKET	No. 11-0842
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petition for review of a Workers’ Compensation Board of Review order affirming denial of an application for dependent’s benefits.
STANDARD OF REVIEW	The Board of Review’s decision is upheld unless it is in clear violation of a constitutional or statutory provision, clearly the result of erroneous conclusions of law, or based on a material misstatement or mischaracterization of the evidentiary record.
PRECEDENTIAL VALUE	Memorandum decision under West Virginia Rule of Appellate Procedure 21; limited precedential value.
PARTIES	Noretta Mobley, Widow of Samuel Mobley v. West Virginia Office of Insurance Commissioner, Pittston Coal

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QUESTIONS PRESENTED

1. Whether the evidence established that Samuel Mobley was exposed to the hazards of occupational pneumoconiosis.
2. Whether the evidence established that occupational pneumoconiosis contributed in any material degree to Samuel Mobley's death, as required for dependent's benefits.
3. Whether the Workers' Compensation Board of Review's decision denying dependent's benefits was clearly erroneous, legally erroneous, or based on a material misstatement or mischaracterization of the evidentiary record.

HOLDINGS

1. A claimant seeking workers' compensation benefits related to occupational pneumoconiosis must demonstrate exposure to a hazard consisting of minute particles of dust in abnormal quantities in the work area; employment at a generally dusty location alone is insufficient. The evidence did not establish that prerequisite here.
2. To establish entitlement to dependent's benefits, a claimant must show that an occupational disease or injury contributed in any material degree to the death. The record contained no evidence connecting Mr. Mobley's death to occupational pneumoconiosis in any material degree.
3. 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

"a 'hazard,' as contemplated by the statute, consists of any condition where it can be demonstrated that there are minute particles of dust in abnormal quantities in the work area."

"a claimant must demonstrate the presence of a hazard through a showing that "minute particles of dust exist in abnormal quantities in the work area.""

FACTUAL BACKGROUND

Samuel Mobley worked as a construction worker for various employers and stopped working in 1989 because of a back injury, for which he received a permanent total disability award. He married Noretta Mobley in 1996 and died in 2007. After his death, Noretta applied for dependent's benefits, alleging that Samuel had suffered from occupational pneumoconiosis, but the record did not establish either the required occupational pneumoconiosis hazard exposure or that occupational pneumoconiosis contributed materially to his death.

PROCEDURAL HISTORY

The claims administrator denied Noretta Mobley's application for dependent's benefits on September 19, 2008. The Workers' Compensation Office of Judges affirmed that decision on September 27, 2010, and the Workers' Compensation Board of Review affirmed on April 26, 2011. The Supreme Court of Appeals of West Virginia reviewed the Board's final order and affirmed it by memorandum decision.

DISPOSITION

affirmed

CASES CITED

- Meadows v. Workmen's Compensation Commissioner, 157 W. Va. 140, 198 S.E.2d 137 (1973)
- Sluss v. Workers' Compensation Commissioner, 174 W. Va. 433, 327 S.E.2d 413 (1985)
- Bradford v. Workers' Compensation Commissioner, 185 W. Va. 434, 408 S.E.2d 13 (1991)

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