

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

TOPICS

insurance

administrative law

judicial review of agency action

appellate procedure

standard of review

PRACTICE AREAS

workers' compensation

occupational disease benefits

administrative appeals

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)

OPINION

PER CURIAM.

STATE OF WEST VIRGINIA SUPREME COURT OF APPEALS FILED February 20, 2013 RORY L. PERRY II, CLERK NORETTA MOBLEY, WIDOW OF SUPREME COURT OF APPEALS OF WEST VIRGINIA SAMUEL MOBLEY, Claimant Below, Petitioner vs.) No. 11-0842 (BOR Appeal No. 2045204) (Claim No. 2008044194) WEST VIRGINIA OFFICE OF INSURANCE COMMISSIONER Commissioner Below, Respondent and PITTSTON COAL, Employer Below, Respondent MEMORANDUM DECISION Petitioner Noretta Mobley, by John Skaggs, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review.

The West Virginia Office of Insurance Commissioner, by Mary Rich Maloy, its attorney, filed a timely response. This appeal arises from the Board of Review's Final Order dated April 26, 2011, in which the Board affirmed a September 27, 2010, Order of the Workers' Compensation Office of Judges.

In its Order, the Office of Judges affirmed the claims administrator's September 19, 2008, decision denying Ms. Mobley's application for dependent's benefits. 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. 1 Samuel Mobley worked for various employers as a construction worker. He stopped working in 1989 due to a back injury, and received a permanent total disability award.

In 1996, Samuel and Noretta Mobley were married. Mr. Mobley passed away in 2007. Subsequently, Ms. Mobley filed an application for dependent's benefits, alleging that Mr. Mobley suffered from occupational pneumoconiosis.

The claims administrator denied Ms. Mobley's application for dependent's benefits on September 19, 2008. The Office of Judges affirmed the claims administrator's Order and found that the preponderance of the evidence did not establish that Ms. Mobley is entitled to dependent's benefits because the evidence did not demonstrate that Mr. Mobley suffered from occupational pneumoconiosis.

West Virginia Code § 23-4-1(b) (2008) states that in order to be eligible for workers' compensation benefits related to occupational pneumoconiosis, a claimant must have been exposed to the "hazards of occupational pneumoconiosis." In *Meadows v. Workmen's Compensation Com'r*, 157 W.Va. 140, 145, 198 S.E.2d 137, 139 (1973), this Court held that "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." In *Sluss v. Workers' Compensation Com'r*, 174 W.Va.

433, 436, 327 S.E.2d 413, 415 (1985), this Court rejected the proposition that a claimant can demonstrate exposure merely by employment at a dusty location, such as a mine site, and reiterated the holding in *Meadows* that 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." In its Order, the Office of Judges held that the evidence did not establish that the dust exposure prerequisite had been met.

The Board of Review reached the same reasoned conclusions in its decision of April 26, 2011. Further, in *Bradford v. Workers' Compensation Com'r*, Syl. Pt. 3, 185 W.Va. 434, 408 S.E.2d 13 (1991), this Court held that in order 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 lacks evidence relating Mr. Mobley's death to occupational pneumoconiosis in any material degree.

Therefore, 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: February 20, 2013
2 CONCURRED IN BY: Chief Justice Brent D. Benjamin Justice Robin J. Davis Justice Margaret
L. Workman Justice Menis E. Ketchum Justice Allen H. Loughry II 3

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