

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Duane Eugene Gump v. Consolidation Coal Company/Eastern
Region Shoemaker

No. No. 13-1021; BOR Appeal No. 2048149; Claim No. 990028870, Supreme Court of Appeals of West Virginia
(July 27, 2015)

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed a Board of Review decision concerning Duane Eugene Gump's entitlement to additional permanent partial disability benefits. The court held that the existing awards fully compensated his cervical spine and shoulder injuries, while affirming a remand for further evaluation of the compensable thoracic spine injury.

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	July 27, 2015
DOCKET	No. 13-1021; BOR Appeal No. 2048149; Claim No. 990028870
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petition for appeal from the West Virginia Workers' Compensation Board of Review's final order affirming the Office of Judges' decision concerning the claimant's entitlement to additional permanent partial disability benefits.
STANDARD OF REVIEW	The Board of Review's decision is affirmed unless it violates 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	Published memorandum decision; precedential treatment should be verified under applicable West Virginia law.
PARTIES	Duane Eugene Gump v. Consolidation Coal Company/Eastern Region Shoemaker

TOPICS

workers compensation

appellate procedure

administrative law

standard of review

PRACTICE AREAS

Workers' compensation

Administrative law

Appellate procedure

QUESTIONS PRESENTED

1. Whether Gump proved entitlement to more than the existing permanent partial disability awards for his cervical-spine and shoulder injuries.
2. Whether the workers' compensation authorities properly remanded the thoracic-spine issue for further independent medical evaluation because the thoracic spine was a compensable component that had not been adequately evaluated.

HOLDINGS

1. Gump failed to prove that he was entitled to more than the existing permanent partial disability awards for his cervical-spine and shoulder injuries.
2. The thoracic-spine issue was properly remanded to the claims administrator for further evaluation because the thoracic spine was a compensable component of the claim and had not been adequately evaluated.
3. The Board of Review's decision 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, so the decision was affirmed.

KEY QUOTATIONS

"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." (at 1)

"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

Duane Eugene Gump, an underground miner, injured his back and shoulder when his head struck a low-hanging pipeline while riding in an underground mine shuttle on September 4, 1998. His workers' compensation claim was held compensable for thoracic sprain, cervical strain, and cervical disc displacement, and he received permanent partial disability awards based on several independent medical evaluations. After a later evaluation suggested additional impairment, Gump sought reopening and asserted that he was entitled to additional benefits, but the claims administrator, the Office of Judges, and the Board of Review determined that the existing awards fully compensated his cervical-spine and shoulder injuries while remanding the thoracic-spine issue for further evaluation.

PROCEDURAL HISTORY

The claims administrator denied additional permanent partial disability benefits, concluding that prior awards fully compensated the claimant for the compensable injuries. The Workers' Compensation Office of Judges affirmed that determination as to the cervical spine and shoulder but remanded the thoracic-spine issue to the claims administrator for further evaluation. The Board of Review adopted and affirmed the Office of Judges' order, and the Supreme Court of Appeals affirmed the Board.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The claims administrator must obtain further independent medical evaluation of the thoracic spine and enter a new protestable order addressing that component of the compensable injury.

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/west-virginia-supreme-court-of-appeals-of-west-virginia/2015/duane-eugene-gump-v-consolidation-coal-company-eastern-zdhy4bbc>