

West Virginia Supreme Court Finds Claimant's Death To Be Work-Related Even Though His Head Injury Occurred Over A Year Prior With No Intervening Treatment



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West Virginia Code § 23-4-10 provides that when a personal injury suffered by an employee in the course of and resulting from his or her employment causes death, and the disability is continuous from the date of injury until the date of death, the decedent's dependents may receive benefits. The West Virginia Supreme Court of Appeals recently affirmed an award of these death benefits, even though the claimant's disability was not obviously continuous from the time of his work-related injury as he was not in active treatment for any disability at the time of his death.

In the prior related case before the West Virginia Supreme Court of Appeals, the Court found that a dependent's application for death benefits was timely filed even though it was filed more than six months after the decedent's death, based on the specific finding that:

Where a claimant to dependent's death benefits under the Workers' Compensation Act delays filing a claim because the claimant was unaware, and could not have learned through reasonable diligence, that the decedent's cause of death was work-related, and the delay was due to the medical examiner completing and making available an autopsy report, the six-month time limitation on filing a claim in W. Va. Code § 23-4-15(a)[2010] is tolled until the claimant, through reasonable diligence, could have learned of the autopsy report finding that the decedent's cause of death was, in any material degree, contributed to by an injury or disease that arose in the course of and resulting from the decedent's employment.

The Supreme Court limited its holding to death benefits under the Workers' Compensation Act where the delay was on the part of the medical examiner and not the claimant. It also explained that this holding does not apply to claimants who delay having an autopsy performed and that the claimant's failure to timely file a claim within the six months of when he or she could have learned that the employee's death arose in the course of and resulting from employment will not be excused.

Based upon this decision, the claim was remanded back to the claims administrator for a decision on the merits of the application for dependent's benefits. In this case, a twenty-four (24) year old coal miner died in his sleep from a seizure on December 7, 2010. At the time, he left behind his mother, who was the petitioner in the Supreme Court case, and his six (6) year old daughter, on whose behalf the mother petitioned the Court. Prior to his death on December 7, 2010, the decedent suffered a work-related injury on March 24, 2009, when a wrench hit him on the head. He lost consciousness for one (1) minute, and the injury resulted in a golf ball sized knot on his head. He was transported to the local hospital but was essentially released with pain medication and told to return for a follow up visit, if necessary. The claimant did not seek any additional medical treatment for this injury, and his claim was closed for temporary total disability benefits because he was not off work for more than three days. Twenty-one (21) months after this injury, the decedent died in his sleep. The medical examiner performed an autopsy on December 8, 2010, the next day. For reasons that were not developed in the evidence, the autopsy report was not completed and made available to the decedent's family until August 24, 2011, more than eight (8) months after his death. The autopsy report declared that the claimant died as a result of a traumatic seizure disorder that resulted from the 2009 work injury. The autopsy report did not establish when the decedent began to suffer from the seizure disorder, and his death certificate was amended to show that the claimant's cause of death was a consequence of the traumatic seizure disorder.

Based upon these facts, the claims administrator denied the application for benefits because there was not sufficient credible evidence linking the cause of death to the work incident. The decedent in this claim sustained a head injury working on a roof bolt machine on March 24, 2009. He was knocked unconscious, complained of a bad headache, and a bump the size of a golf ball on his head. The decedent was transported by ambulance to the emergency room at Welch Community Hospital where he was diagnosed with a contusion to the head and a concussion with loss of consciousness. A CT of his head was normal. He was prescribed medication and told to return to the walk-in clinic for a follow-up, if necessary. Over a year later, on

December 7, 2010, the claimant died at his home in his sleep.

As indicated above, the death certificate listed the cause of death as seizure, and it also stated that the claimant was struck in the head while working as a professional coal miner. An anatomic and forensic pathologist prepared an additional report on behalf of the dependent claimant and opined that the decedent died as a result of the accident and injuries sustained while at work on March 24, 2009. A board certified neuropathologist, forensic pathologist, and anatomic pathologist also examined the claim on behalf of the employer and indicated her opinion that the records showed that there was an ischemic stroke in the occipital lobe region secondary to hypertension. She opined that the most probable cause of death was cardiac and cerebral hypertensive vascular disease. She also opined that the claimant had an arrhythmia, which caused a hypoxic/ischemic event that resulted in brain swelling.

The Office of Judges weighed this testimony and relied on the opinions of the physician who completed the autopsy and the claimant's expert. The Office of Judges determined that a preponderance of the evidence established that the decedent died as a result of a seizure in the setting of traumatic seizure disorder following a remote head injury at work from March 24, 2009. It reversed the claims administrator's decision and held the claim compensable for dependent's benefits. The Board of Review adopted those findings of fact and conclusions of law and affirmed that decision.

Upon review by the Supreme Court, all five justices found that the decision of the Board of Review in affirming the Office of Judges is not in clear violation of any constitutional or statutory provisions, nor is it clearly the result of erroneous conclusions of law, nor is it based upon material misstatement or mischaracterization of the evidentiary record. Accordingly, the Supreme Court upheld the finding that the award of dependent's benefits was appropriate, even though the claimant passed away over a year after his head injury, which did not result in any additional treatment between the time of injury until the time of death. No medical evidence was submitted to show that the decedent suffered a continuous disability, with the exception of the experts' opinion that the death was related to traumatic seizure syndrome that resulted from the initial head injury.

Even though the applicable code section provides that the disability arising from the personal compensable injury must be continuous from the date of injury until the date of death, this case certainly makes such a requirement easier to prove for dependents. The decedent did not have any obvious disability after the initial treatment in the claim, but the disability was found to be continuous based on autopsy findings.

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