



Appalachian Boiler & Fab, LLC v. Judith A. Caruthers, widow of Johnny A. Caruthers

2024 | Cited 0 times | West Virginia Supreme Court | September 23, 2024

STATE OF WEST VIRGINIA SUPREME COURT OF APPEALS

Appalachian Boiler & Fab, LLC, Employer Below, Petitioner

v.) No. 23-345 (JCN: 2019023975) (ICA No. 22-ICA-219)

Judith A. Caruthers, widow of Johnny A. Caruthers, Claimant Below, Respondent; Alberici Mid Atlantic WV, LLC, Employer Below, Respondent; and West Virginia Office of the Insurance Commissioner, in its capacity as administrator of the Old Fund, Respondent

MEMORANDUM DECISION

Petitioner appeals the April 10, 2023, memorandum decision of the Intermediate Court of Appeals of West Virginia ICA . See Appalachian Boiler & Fab, LLC v. Caruthers, No. 22-ICA-219, 2023 WL 2863260 (W. Va. Ct. App. Apr. 10, 2023) (memorandum decision). Respondents Judith A. Caruthers, widow of Johnny A. Caruthers, and West Virginia Office of the Insurance Commissioner , in its capacity as administrator of the Old Fund, filed timely responses. Respondent Alberici Mid Atlantic WV, LLC . 1 The issue on appeal is whether the ICA erred in affirming the October 3, 2022, Review, which (1) reversed order denying Ms. Caruthers death

acute myeloid leukemia, and (2) designated Appalachian as the chargeable employer.

Appalachian asserts that May 14, 2019, order denying the claim should be reinstated as there were no allegations and no evidence that the decedent was exposed to benzene-containing products during his brief employment by Appalachian. 2 Ms. Caruthers, he was last exposed to benzene-containing products before he retired, the ICA did not err in

1 Appalachian is represented by counsel James W. Heslep. Ms. Caruthers is represented by counsel R. Dean Hartley and James C. Wright. Alberici is represented by counsel Joni M. Mangino and Aaron H. Weiss. WVOIC is represented by counsel Sean Harter. 2 Benzene exposure is a known cause for acute myeloid leukemia. FILED September 23, 2024 C. CASEY FORBES, CLERK SUPREME COURT OF APPEALS OF WEST VIRGINIA affirming the Board of Review because the Board properly (1) awarded death benefits, and (2)

chargeability will not be allocated or divided among employers. See Pioneer Pipe, Inc. v. Swain, 237



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W.Va. 722, 791 S.E.2d 168 (2016).

This Court reviews questions of law de novo, while we accord deference to the Board of Duff v. Kanawha Cnty. , No. 23-43, 2024 WL 1715166 (W. Va. Apr. 22, 2024). Upon consideration of the record and briefs, we find no reversible error and therefore summarily affirm. See W. Va. R. App. P. 21(c).

Affirmed.

ISSUED: September 23, 2024

CONCURRED IN BY:

Chief Justice Tim Armstead Justice Elizabeth D. Walker Justice John A. Hutchison Justice William R. Wooton Justice C. Haley Bunn

