

**STATE OF WEST VIRGINIA**

**SUPREME COURT OF APPEALS**

**FILED**

May 7, 2015

RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

**DIANA POTTER,  
Claimant Below, Petitioner**

vs.) **No. 14-0770** (BOR Appeal No. 2049174)  
(Claim No. 2011028906)

**WEST VIRGINIA UNITED HEALTH SYSTEM, INC.,  
Employer Below, Respondent**

**MEMORANDUM DECISION**

Petitioner Diana Potter, by Robert L. Stultz, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. West Virginia United Health System, Inc., by Gary W. Nickerson and James W. Heslep, its attorneys, filed a timely response.

This appeal arises from the Board of Review's Final Order dated July 3, 2014, in which the Board affirmed a February 3, 2014, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's June 5, 2013, decision denying Ms. Potter's request to add right shoulder adhesive capsulitis as a compensable condition of the claim. 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 that the Board of Review's decision is based upon a material misstatement or mischaracterization of the evidentiary record. This case satisfies the "limited circumstances" requirement of Rule 21(d) of the Rules of Appellate Procedure and is appropriate for a memorandum decision rather than an opinion.

Ms. Potter was a food service worker for West Virginia United Health System, Inc. On February 18, 2011, she tried to catch a door that fell off a food cart and sustained bruises to her right hand, lower right arm, and left foot. Ms. Potter filed an application for workers' compensation benefits based on the injuries she sustained, and the claims administrator held her claim compensable for multiple bruises and contusions of the right hand, right arm, and left foot. Ms. Potter initially received physical therapy for her injury and was discharged from therapy

after she demonstrated significant improvement. Several months later, however, she began experiencing pain and stiffness in her right shoulder. She was treated by Shelley Conley, FNP, who found that her shoulder symptoms were getting worse. An x-ray was then taken of her right shoulder which was unremarkable. Edward Barry McDonough, M.D., then evaluated Ms. Potter. He diagnosed her with right shoulder adhesive capsulitis which he believed she developed from not using her right shoulder following the compensable injury. He noted that her shoulder had gotten stiff following the injury and recommended that she receive aggressive physical therapy. ChuanFang Jin, M.D., then evaluated Ms. Potter. She found that Ms. Potter had right shoulder pain and impingement syndrome but recommended denying the addition of right shoulder adhesive capsulitis as a compensable condition of the claim. Dr. Jin believed there was insufficient evidence indicating that Ms. Potter had sustained a right shoulder injury. Dr. Jin believed that if Ms. Potter's shoulder condition was related to the compensable injury, she would have developed shoulder pain immediately after the acute injury. On June 5, 2013, the claims administrator denied the addition of right shoulder adhesive capsulitis as a compensable condition of the claim. On February 3, 2014, the Office of Judges affirmed the claims administrator's decision. The Board of Review affirmed the Order of the Office of Judges on July 3, 2014, leading Ms. Potter to appeal.

The Office of Judges concluded that the diagnosis of right shoulder adhesive capsulitis should not be added as a compensable condition of the claim. In reaching this determination, the Office of Judges relied on the evaluation of Dr. Jin. The Office of Judges found that the evidence in the record supported Dr. Jin's assessment because Ms. Potter did not develop symptoms of a shoulder injury until several months after the date of the compensable injury. The Board of Review adopted the findings of the Office of Judges and affirmed its Order.

The decision of the Board of Review was based on a material misstatement or mischaracterization of the evidence in the record. Ms. Potter has presented sufficient evidence demonstrating that her right shoulder adhesive capsulitis is causally related to her compensable injury. The treatment notes of Dr. McDonough indicate that Ms. Potter developed adhesive capsulitis when she stopped using her right arm following the compensable injury. Dr. McDonough's opinion demonstrates that adhesive capsulitis is a "normal consequence that flows" from the February 18, 2011, injury and should be added to the claim. *Wilson v. Workers' Comp. Comm'r*, 174 W. Va. 611, 616, 328 S.E.2d 485, 490 (1984). West Virginia United Health System, Inc., has presented significant evidence that Ms. Potter did not sustain a right shoulder injury on February 18, 2011. However, this evidence does not contradict Dr. McDonough's opinion that Ms. Potter's shoulder pain and stiffness developed as a consequence of her injury.

For the foregoing reasons, we find that the decision of the Board of Review is based upon a material misstatement or mischaracterization of the evidentiary record. Therefore, the decision of the Board of Review is reversed and remanded with instructions to add right shoulder adhesive capsulitis as a compensable condition of the claim.

Reversed and Remanded.

**ISSUED: May 7, 2015**

**CONCURRED IN BY:**

Chief Justice Margaret L. Workman  
Justice Robin J. Davis  
Justice Brent D. Benjamin  
Justice Menis E. Ketchum  
Justice Allen H. Loughry II