

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**REBECCA STILTNER,
Claimant Below, Petitioner,**

**vs.) No. 17-0247 (BOR Appeal No. 2051221)
(Claim No. 2015015785)**

**BLUEFIELD REGIONAL MEDICAL CENTER,
Employer Below, Respondent**

FILED

November 22, 2017
EDYTHE NASH GAISER, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Rebecca Stiltner had a compensable injury to her right foot, for which she was paid temporary total disability benefits. We are asked to determine whether the claims administrator properly closed her claim for temporary total disability benefits. As Ms. Stiltner had reached maximum medical improvement for her compensable injury, we find the closure of the claim for temporary total disability benefits was proper. We further find upon consideration of the standard of review, the briefs, and the record, that there is no substantial question of law or prejudicial error necessitating oral argument. As such, a memorandum opinion is appropriate under Rule 21 of the Rules of Appellate Procedure.

Ms. Stiltner, a nurse, had a compensable injury to her right foot on August 28, 2014. Mark Wilt, M.D., diagnosed a stress fracture of the right foot and recommended Ms. Stiltner use a CAM walking boot and stay off of the foot at work. While Ms. Stiltner was receiving treatment for her right knee, she started to develop pain and swelling in her left foot and left knee. A February 3, 2015, MRI of the left foot revealed a stress reaction/nondisplaced fracture of the distal left second metatarsal which was much less severe when compared to a previous right foot MRI. A left knee MRI revealed probable stress reaction or contusion in the medial femoral condyle, small joint effusion, and early degenerative changes of the central patella. Walid Azzo, M.D., diagnosed a stress fracture of the left foot and a left knee bone bruise.

Robert Kropac, M.D., performed an independent medical evaluation on March 24, 2015. He diagnosed a stress fracture of the second metatarsal on the right foot that was healed. He opined that the left knee problems were not work-related. Dr. Wilt completed a diagnosis update on May 7, 2015, requesting that left foot metatarsal stress fracture, left knee pain, and left knee bone contusion be added as compensable components of the claim. The claims administrator denied that request on October 13, 2015.

The Office of Judges reviewed the medical opinions of Drs. Kropac, Wilt, and Azzo in its March 23, 2016, Order. Dr. Kropac was the only physician to address the right foot condition. He concluded that Ms. Stiltner had reached maximum medical improvement as of March 24, 2015. He assessed 0% impairment and opined Ms. Stiltner could resume full duty in reference to the right foot. Drs. Wilt and Azzo only addressed the left foot and knee. Those conditions were not compensable components of the claim. Therefore, the Office of Judges found no credible medical evidence that Ms. Stiltner was temporarily and totally disabled due to her right lower extremity after March 30, 2015, and affirmed the closure of the claim for temporary total disability benefits. The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its Order on February 17, 2017.

Ms. Stiltner, through her attorney Gregory S. Prudich, argues that the left knee and foot condition should be held compensable and therefore, the closure of the claim was improper. Bluefield Regional Medical Center, through its attorney Mark J. Grigoraci, argues the right foot is the only compensable condition and the evidence supports the closure of the claim for temporary total disability benefits.

After review, we agree with the decision of the Office of Judges as affirmed by the Board of Review. The Office of Judges correctly determined that Ms. Stiltner's left foot and knee had not been held to be compensable components of the claim. The only medical evidence of Ms. Stiltner's continued temporary total disability status after the closure of the claim for temporary total disability benefits was in relation to the left foot and knee. As the evidentiary record established that Ms. Stiltner had reached maximum medical improvement in relation to her right foot, the claims administrator's decision to close the claim for temporary total disability benefits was proper.

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: November 22, 2017

CONCURRED IN BY:

Chief Justice Allen H. Loughry II
Justice Robin J. Davis
Justice Menis E. Ketchum
Justice Elizabeth D. Walker

DISSENTING:

Justice Margaret L. Workman