BEFORE THE WEST VIRGINIA SUPREME COURT OF APPEALS

RAMACO RESOURCES, INC.,

Petitioner,

v.

CHARLES ROLLINS,

Respondent.

Supreme Court No.: 19-1163
Appeal No.: 2054430
JCN: 2018024130
DOI: 4/20/18

PETITION FOR APPEAL ON BEHALF OF PETITIONER, RAMACO RESOURCES, INC.

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ASSIGNMENTS OF ERROR

I. THE WORKERS' COMPENSATION BOARD OF REVIEW HAS COMMITTED CLEAR AND REVERSIBLE ERROR BY AFFIRMING THE ADMINISTRATIVE LAW JUDGE'S OBVIOUSLY WRONG DECISION TO REVERSE THE REJECTION OF THE INSTANT CLAIM, AS A CLEAR PREPONDERANCE OF THE EVIDENCE OF RECORD, INCLUDING THE VALID FINDINGS OF THE ONLY BOARD CERTIFIED RADIOLOGIST OF RECORD AND TWO OTHER PHYSICIANS, ESTABLISHES THAT THE CLAIMANT, WHO HAD FRACTURED HIS RIGHT WRIST AT HOME ON JANUARY 5, 2018, HAD NOT SUSTAINED A NEW FRACTURE AT WORK ON APRIL 20, 2018.

II. THE WORKERS' COMPENSATION BOARD OF REVIEW ALSO HAS ERRED BY RATIFYING THE ADMINISTRATIVE LAW JUDGE'S CLEARLY ERRONEOUS FAILURE TO APPLY HEREIN, *GILL V. CITY OF CHARLESTON*, 236 W. Va. 737, 783 S.E.2d 857 (2016).

NATURE OF PETITION FOR APPEAL

Petitioner, Ramaco Resources, Inc. ("the employer"), by counsel, petitions for appeal from the Workers' Compensation Board of Review's order dated November 22, 2019, which affirmed the Decision of Administrative Law Judge dated July 1, 2019, which, *inter alia*, erroneously

reversed the carrier's order dated May 3, 2018 which had correctly rejected the application for workers' compensation benefits filed on behalf of Respondent, Charles Rollins ("the claimant"), and ruled the instant claim compensable for a distal radius fracture and a sprain of the ulnar joint of the right wrist. The employer, by counsel, respectfully requests this Honorable Court to reverse the Workers' Compensation Board of Review's order dated November 22, 2019, reinstate the carrier's rejection order dated May 3, 2018, and dismiss as moot, all of the claimant's other protests, including the protests to the carrier's orders dated May 4, 2018 (x4), May 11, 2018, May 14, 2018 (x2), May 21, 2018, and May 29, 2018.

Administrative Law Judge J. Marty Mazezka arbitrarily disregarded a clear preponderance of the evidence of record, which established that the claimant had sustained a severely broken right wrist in a slip-and-fall accident at home on January 5, 2018, and did not sustain a new fracture to the right wrist at work on April 20, 2018, and the Workers' Compensation Board of Review ("the Board of Review") erroneously ratified Judge Mazezka's clear errors. In addition, Judge Mazezka wrongly relied exclusively upon the equivocal findings of Robert McCleary, D.O., and arbitrarily disregarded all of the other evidence of record, which included the valid findings of a Board-certified radiologist and two evaluating physicians, and the Board of Review erroneously affirmed Judge Mazezka's obvious errors. Judge Mazezka, then the Board of Review, also committed clear legal error by failing to apply, or even cite, *Gill v. City of Charleston*, 236 W. Va. 737, 783 S.E.2d 857 (2016).

STATEMENT OF THE CASE

The claimant, a diesel mechanic, was hired by Ramaco Resources, LLC, the employer herein, on July 24, 2017 (see the transcript of the September 11, 2018, deposition of Charles Rollins

at 4-5 & 25; Petitioner's Appendix, Exhibit A). Less than three months after his hire date, the claimant filed a workers' compensation claim for an injury to his *left* wrist, which had allegedly occurred on October 16, 2017, and subsequently testified that he had previously injured his *left* wrist in 2011 (TR. 25-27 & 29).

On January 5, 2018, at approximately 2:15 a.m., the claimant, who was walking to a bathroom at his house, slipped on slick hardwood flooring, and fell forward, striking his head, left knee and *right* wrist (see Logan Regional Medical Center's Emergency Department Record dated January 5, 2018; Petitioner's Appendix, Exhibit B). During his visit to the Emergency Department of Logan Regional Medical Center on the morning of January 5, 2018, the claimant complained of pain in his right wrist, and hospital personnel noted swelling and loss of range of motion in such wrist. X-rays taken of the claimant's right wrist on January 5, 2018, revealed an acute, nondisplaced distal right radial metaphyseal fracture, as well as a 3 mm foreign body within the pulmonary soft tissues overlying the fifth metacarpal (see Petitioner's Appendix, Exhibit B). The claimant was discharged from the hospital with a diagnosis of a fracture of lower end of radius, prescribed Norco, an ace bandage, and a splint, and referred to Robert McCleary, D.O. for follow-up care (Id.).

Dr. McCleary assumed care and treatment of the claimant, relative to the right-wrist injury of January 5, 2018, on January 8, 2018 (see Dr. McCleary's report dated January 8, 2018; Petitioner's Appendix, Exhibit C). (Dr. McCleary had previously treated the claimant's *left* wrist.) He diagnosed an other closed extra-articular fracture of the distal end of the right radius, and recommended right distal radius percutaneous pinning with casting on January 8, 2018 (Id.).

On January 9, 2018, Dr. McCleary performed surgery on the claimant's right wrist, which involved right distal radius percutaneous pinning, with three .75 mm pins, and the application

of a short-arm cast (see Logan Regional Medical Center's Operative Report dated January 9, 2018; Petitioner's Appendix, Exhibit D). Dr. McCleary's postoperative diagnosis was right distal radius intraarticular fracture, two part, traumatic. X-rays taken of the claimant's right wrist on January 9, 2018, post-surgery, revealed three fixation pins placed across the distal radius fracture (Id.).

Dr. McCleary testified that the surgery that he had performed on January 9, 2018, had been necessary because the claimant's non-compensable, "unstable," right-wrist fracture of January 5, 2018, had "displaced itself and would not hold still just to cast, so, I put pins in to hold it still and reduce it" (see the transcript of the November 5, 2018, deposition of Dr. Robert W. McCleary, Jr. at 12; Petitioner's Appendix, Exhibit E). He testified further that he had kept the claimant's right-upper extremity in a cast until February 5, 2018, on which date he had removed the pins that he had surgically placed, applied a brace, and recommended that the claimant start participating in physical therapy (TR. 13-14).

X-rays taken of the claimant's right wrist at Logan Regional Medical Center on February 5, 2018, revealed a nondisplaced right distal radius fracture, with routine healing, status post pin placement (see Petitioner's Appendix, Exhibit F). Dr. McCleary testified that the x-rays dated February 5, 2018, revealed that the claimant's right-wrist fracture of January 5, 2018, was "beginning to heal" (TR. 14; Petitioner's Appendix, Exhibit E).

X-rays taken of the claimant's right wrist at Logan Regional Medical Center on March 5, 2018, revealed a nondisplaced right distal radius fracture, with routine healing (see Petitioner's Appendix, Exhibit G). After some reluctance to answer the question directly, Dr. McCleary admitted that there was no x-ray evidence that the claimant's non-compensable, right-wrist fracture of January 5, 2018, had healed before the claimant had allegedly injured the right wrist again

on April 20, 2018 (TR. 16; Petitioner's Appendix, Exhibit E).

Dr. McCleary noted on April 2, 2018, that the claimant still had "some stiffness and weakness," but added that the claimant had finished physical therapy, and would be able to return to work a week later. In fact, Dr. McCleary released the claimant to return to work, full-duty, effective April 9, 2018, notwithstanding the fact that no x-ray had been taken of the claimant's right wrist since March 5, 2018. The claimant admitted that when he returned to work on April 9, 2018, he did not have full strength in his right hand (see the transcript of the September 11, 2018, deposition of Charles Rollins at 12-13; Petitioner's Appendix, Exhibit A).

The claimant visited Logan Regional Medical Center on April 20, 2018. He informed hospital personnel that his right wrist had "popped" as he had loosened a bolt with a wrench at work that same day. In addition, the claimant reported that he had developed right-wrist pain and mild swelling. X-rays taken of the claimant's right wrist and forearm at Logan Regional Medical Center on April 20, 2018, revealed a "slightly impacted fracture at the volar aspect of the distal radial metaphysis," according to Dr. Torin Walters. Similarly, Dr. Marsha Anderson reported that x-rays taken of the claimant's right hand on April 20, 2018, revealed a distal radius fracture, without significant displacement, as well as a foreign body either on or within the soft tissues of the right hand (see Petitioner's Appendix, Exhibit H). Hospital personnel diagnosed a right-wrist fracture, applied a splint to the claimant's right wrist, recommended that the claimant follow-up with Dr. Ramanathan Padmanaban, and completed an Employees' and Physicians' Report of Occupational Injury or Disease on the claimant's behalf. In the claimant's Employees' and Physicians' Report of Occupational Injury or Disease dated April 20, 2018, hospital personnel stated that the claimant's injury of April 20, 2018, had aggravated a prior injury or disease (see Petitioner's Appendix, Exhibit

I).

In the Employers' Report of Occupational Injury or Disease and fax cover sheet dated April 23, 2018, Caryn Merton, the employer's Vice President for Human Resources, stated that the claimant had broken his right wrist at home on January 5, 2018, that the claimant's alleged injury of April 20, 2018, had not been witnessed, and that the employer "seriously" questioned that the claimant had been injured on April 20, 2018 (see Petitioner's Appendix, Exhibit J). Ms. Merton added that the claimant had not hit his arm on anything, and that the ratchet that the claimant had used had not slipped off of the bolt (Id.).

The claimant visited Dr. McCleary's office on April 23, 2018. He told Dr. McCleary that he had sustained a new injury to his right wrist while loosening a bolt at work on April 20, 2018. Dr. McCleary diagnosed a nondisplaced fracture of the distal end of the radius, prescribed Norco and a splint, and recommended an MRI.

Dr. McCleary interpreted an x-ray taken of the claimant's right wrist on April 30, 2018, as revealing a right distal radius fracture and severe sprain of the distal radial ulnar joint. His examination of the claimant's right wrist on April 30, 2018, revealed "abundant" swelling and numbness in Mr. Rollins' left thumb, "signs of complex regional pain syndrome secondary the shininess persistent digit swelling and dysfunction now," and an inability to make a full fist. Dr. McCleary diagnosed other closed extra-articular fracture of distal end of right radius with routine healing, and recommended physical therapy as well as an MRI to rule out tendon injury and distal radial ulnar joint dislocation, and assess radial fracture.

Dr. Prasadarao B. Mukkamala evaluated the claimant at the carrier's request on May 1, 2018, and authored a report dated May 3, 2018 (see Petitioner's Appendix, Exhibit K). After

having examined the claimant and reviewed the claimant's medical records, Dr. Mukkamala rendered the following opinions: "It is my professional opinion that at the time of the incident of 4/20/2018, there was no new injury to the right wrist. The right wrist fracture that the claimant sustained on 1/5/2018 which was in relation to noncompensable injury has not completely healed." Dr. Mukkamala added that "[t]here was no evidence of any new fracture and therefore there was no evidence of any new injury with relation to the incident of 4/20/2018." Further, Dr. Mukkamala stated that the claimant had returned to work before the fracture sustained on January 5, 2018, had completely healed, and that work activity had exacerbated the previously sustained noncompensable injury.

With respect to further medical care and treatment, Dr. Mukkamala recommended physical therapy and the continued use of a brace. However, Dr. Mukkamala added that neither an MRI nor pain management was indicated, and that the claimant did not have complex regional pain syndrome (CRPS) (Id.).

By order dated May 3, 2018, the carrier rejected the claimant's application for workers' compensation benefits, based upon Dr. Mukkamala's finding that the claimant's noncompensable right-wrist fracture of January 5, 2018, had not completely healed by April 20, 2018 (see Petitioner's Appendix, Exhibit L). The carrier subsequently entered 10 orders, which denied requests for authorization of an MRI, physical therapy, an FCE, and payment of medical bills, based upon its decision to reject the claim (see Petitioner's Appendix, Exhibit M). The claimant protested the carrier's 11 orders.

On May 7, 2018, Dr. McCleary stated that he believed that the claimant had sustained a "new" injury on April 20, 2018, diagnosed an other closed extra-articular fracture of distal end of

right radius with routine healing, subsequent encounter, and estimated that the claimant would not be able to return to work for at least two months.

An MRI of the claimant's right wrist was taken at Logan Regional Medical Center on May 8, 2018 (see Petitioner's Appendix, Exhibit N). Dr. Paul Akers detected a nondisplaced fracture of the distal radius, but no evidence of a tendon or ligamentous tear (Id.).

The evidentiary record also contains Dr. McCleary's notes dated May 11, 2018, which contain multiple wrong references to the claimant as, "she" and offer nothing new of substance.

As noted above, Dr. McCleary's deposition was taken on November 5, 2018, per the request of claimant's counsel. Dr. McCleary testified that he believed that the claimant had sustained a new fracture to the right wrist on April 20, 2018, because the claimant allegedly had no pain or range of motion limitations when he released the claimant to return to work, based upon his examination of the claimant on April 2, 2018 (see the transcript of the November 5, 2018, deposition of Dr. Robert W. McCleary, Jr. at 5-8; Petitioner's Appendix, Exhibit E). However, Dr. McCleary inconsistently testified that "you really couldn't tell" whether the fracture revealed by x-rays taken of the claimant's right wrist on April 20, 2018, was the "same fracture" as the non-compensable fracture sustained by the claimant on January 5, 2018 (TR. 8). Moreover, Dr. McCleary admitted on cross-examination that there was no x-ray taken of the claimant's right wrist that indicated that the claimant's non-compensable, right-wrist fracture of January 5, 2018, had fully healed (TR. 16).

Dr. Syam B. Stoll evaluated the claimant at the request of employer's counsel on January 10, 2019. After having examined the claimant and reviewed the claimant's medical records and other claim documents, Dr. Stoll requested employer's counsel to arrange for an expert interpretation of x-rays taken of the claimant's right wrist. In accordance with Dr. Stoll's request,

Dr. Jonathan Luchs, a Board-certified radiologist, interpreted, "aged," and compared, the x-rays taken of the claimant's right wrist on January 5, 2018, March 5, 2018, and April 20, 2018, and rendered four reports dated March 4, 2019 (see Petitioner's Appendix, Exhibit O). Dr. Luchs unequivocally opined that the right-wrist fracture revealed by the x-ray dated April 20, 2018, had been present on the x-rays dated January 5, 2018, and March 5, 2018, and, therefore, predated the claimant's alleged injury of April 20, 2018. He added that a likely foreign body within the palm of the claimant's right hand revealed by x-ray also predated the claimant's alleged injury of April 20, 2018 (Id.).

After having reviewed Dr. Luchs' four reports, Dr. Stoll rendered his evaluation report, which bears the date of his physical examination of the claimant, January 10, 2019 (see Petitioner's Appendix, Exhibit P). In addressing the mechanism of the claimant's alleged injury of April 20, 2018, Dr. Stoll reported, as follows: "Review of mechanism of injury that is reported by the claimant on 4/20/2018 at the ER of simply loosening a bolt, no matter how hard it was fastened, would not have enough mechanical force that would fracture a bone." Dr. Stoll added that when the claimant was released to return to work in early-April 2018, no x-ray verifying complete healing of the non-compensable fracture of January 5, 2018, had been taken. In addition, Dr. Stoll noted that Dr. Luchs' interpretation of the claimant's right-wrist x-rays had revealed that the non-compensable fracture of January 5, 2018, had not healed as of April 20, 2018, the date of the claimant's alleged, work-related injury. These facts led Dr. Stoll to conclude, as follows: "Therefore, the mechanism of injury as well as age analysis of the imaging reveals that the original wrist fracture from 1/05/2018 was not completely healed prior to being released to full work duties."

Dr. Stoll stated that he agreed with Dr. Mukkamala's "assessments and conclusions."

More specifically, Dr. Stoll agreed with Dr. Mukkamala's opinion that the claimant did not sustain a second/new right wrist fracture at work on April 20, 2018, an opinion that was confirmed by Dr. Luchs' interpretation of the x-rays taken of the claimant's right wrist on January 5, 2018, March 5, 2018, and April 20, 2018. Conversely, Dr. Stoll disagreed with Dr. McCleary's opinions regarding the claimant's right-wrist fracture, based upon the following: "It is my medical opinion that the claimant's right-wrist fracture had not completely healed by April 2, 2018, and therefore the claimant did not sustain a new right-wrist fracture on April 20, 2018" (Id.).

By Decision of Administrative Law Judge dated July 1, 2019, the Honorable J. Marty Mazezka reversed the carrier's order dated May 3, 2018, which rejected the claimant's application for workers' compensation benefits, and ruled the instant claim compensable for a distal radius fracture and a sprain of the ulnar joint of the right wrist (see Petitioner's Appendix, Exhibit Q). Judge Mazezka also reversed nine other orders entered by the carrier, which denied requests for medical benefits, and were dated May 4, 2018 (x4), May 11, 2018, May 14, 2018 (x2), May 21, 2018, and May 29, 2018, and remanded these issues to the carrier. Among other clear errors, Judge Mazezka wrongly relied exclusively upon Dr. McCleary's equivocal findings, arbitrarily disregarded the valid findings rendered by Drs. Luchs, Mukkamala, and Stoll, and incorrectly failed to apply herein *Gill v. City of Charleston*, 236 W. Va. 737, 783 S.E.2d 857 (2016) (Id.). The employer, by counsel, appealed from the invalid Decision of Administrative Law Judge dated July 1, 2019.

By order dated November 22, 2019, the Board of Review erroneously affirmed the invalid Decision of Administrative Law Judge dated July 1, 2019 (see Petitioner's Appendix, Exhibit R). The employer, by counsel, petitions for appeal from the clearly wrong order dated November 22, 2019.

SUMMARY OF ARGUMENT

A clear preponderance of the evidence of record, including the claimant's medical records and the valid findings of three physicians, one of whom is the only Board-certified radiologist of record, establishes that the claimant sustained a severe fracture to his right wrist at home on January 5, 2018, but did not sustain a discrete new injury in the course of, and as the result of, his work on April 20, 2018. Judge Mazezka and the Board of Review have wrongly disregarded a preponderance of the evidence of record, and rendered invalid decisions. Further, both Judge Mazezka and the Board of Review have committed clear error in failing to apply, or even cite, *Gill v. City of Charleston*, 236 W. Va. 737, 783 S.E.2d 857 (2016).

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Employer's counsel does not believe that oral argument is necessary in the instant claim.

ARGUMENT

The Board of Review's order dated November 22, 2019, is clearly erroneous and should be reversed. The standard of review applicable to the issue on appeal herein is, as follows: "If the decision of the board effectively represents a reversal of a prior ruling of either the [carrier] or the office of judges that was entered on the same issue in the same claim, the decision of the board may be reversed or modified by the supreme court of appeals only if the decision is in clear violation of constitutional or statutory provisions, is clearly the result of erroneous conclusions of law, or is so clearly wrong based upon the evidentiary record that even when all inferences are resolved in favor of the board's findings, reasons and conclusions, there is insufficient support to sustain the decision. The court may not conduct a de-novo reweighing of the evidentiary record." W. Va. Code

§ 23-5-15(d) (2005). The Board of Review's order dated November 22, 2019, is clearly the result of erroneous conclusions of law, and obviously contrary to the evidentiary record.

Contrary to the Board of Review's clearly wrong ruling, the Decision of Administrative Law Judge dated July 1, 2019, is invalid, and should have been reversed. The Board of Review shall reverse, vacate or modify a decision of an administrative law judge if the substantial rights of the appellant have been prejudiced because the Administrative Law Judge's findings are: (1) In violation of statutory provisions; or (2) in excess of the statutory authority or jurisdiction of the Administrative Law Judge; or (3) made upon unlawful procedures; or (4) affected by other error of law; or (5) clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. W. Va. Code § 23-5-12(b) (2006). Judge Mazezka's decision is arbitrary, affected by errors of law, and not supported by reliable, probative or substantial evidence, and, therefore, should have been reversed by the Board of Review.

THE BOARD OF REVIEW'S ORDER DATED NOVEMBER 22, 2019, IS CLEARLY WRONG AND SHOULD BE REVERSED BECAUSE IT IS CONTRARY TO A PREPONDERANCE OF THE EVIDENCE OF RECORD AND *GILL v. CITY OF CHARLESTON*, 236 W. VA. 737, 783 S.E.2d 857 (2016).

A clear preponderance of the evidence of record establishes that the claimant sustained a severe fracture to his right wrist at home on January 5, 2018, and did not sustain a discrete new injury in the course of, and as the result of, his work on April 20, 2018. "In order for a claim to be held compensable under the Workmen's Compensation Act, three elements must co-exist: (1) a personal injury (2) received in the course of employment *and* (3) resulting from that

employment." Syl. Pt. 1, *Barnett v. State Workmen's Compensation Com'r*, 153 W. Va. 796, 172 S.E.2d 698 (1970). An aggravation of a noncompensable, preexisting condition, which does not result in a discrete new injury, is not compensable. *See, Gill v. City of Charleston*, 236 W. Va. 737, 783 S.E.2d 857 (2016). Further, the resolution of the compensability issue herein shall be based upon a weighing of all evidence pertaining to the issue and a finding that a preponderance of the evidence supports the chosen manner of resolution. The process of weighing evidence shall include, but not be limited to, an assessment of the relevance, credibility, materiality and reliability that the evidence possesses in the context of the issue presented. No issue may be resolved by allowing certain evidence to be dispositive simply because it is reliable and is most favorable to a party's interests or position. W. Va. Code § 23-4-1g(a) (2003). A preponderance of the evidence of record establishes that the claimant has not sustained a discrete new injury in the course of, and resulting from, employment.

The employer, by counsel, has established by substantial and reliable medical evidence that the claimant sustained a severe, non-compensable right-wrist fracture on January 5, 2018. Logan Regional Medical Center's records dated January 5, 2018, and January 9, 2018, establish that the claimant fractured his right wrist at home, and that such fracture was of such severity that it required the surgical placement of three pins in it, and the application of short-arm cast, which were not removed until February 5, 2018.

The employer, by counsel, also has established by a preponderance of evidence that the claimant's non-compensable, right-wrist fracture of January 5, 2018, had not healed by the time that the claimant had allegedly injured himself at work on April 20, 2018, and that the claimant did not sustain a new right-wrist fracture on April 20, 2018. Dr. McCleary's x-ray reports dated

February 5, 2018, and March 5, 2018, establish that the claimant's non-compensable, right-wrist fracture of January 5, 2018, had partially healed, but not fully healed. Further, Dr. McCleary admitted during his deposition of November 5, 2018, that he had released the claimant to return to work in early-April 2018, without having first obtained an x-ray establishing that the non-compensable right-wrist fracture of January 5, 2018, had fully healed.

Dr. Luchs' four x-ray interpretation/aging/comparison reports dated March 4, 2019, are substantial, reliable, and probative evidence, which support the carrier's orders, but not the Decision of Administrative Law Judge dated July 1, 2019, or the Board of Review's order dated November 22, 2019. Dr. Luchs, a Board-certified radiologist, analyzed the x-rays taken of the claimant's right wrist on January 5, 2018, March 5, 2018, and April 20, 2018, and determined that the claimant had sustained an acute fracture of the distal radius (at home) on January 5, 2018, and that this fracture had *not* healed as of April 20, 2018, the date on which the claimant allegedly injured the right wrist at work. Dr. Luchs unequivocally opined that the abnormalities revealed by the x-rays taken of the claimant's right wrist following the alleged injury of April 20, 2018, including the fracture of the distal radius, dated back to January 5, 2018, and predated the alleged injury of April 20, 2018.

Dr. Luchs' findings are entirely consistent with the evaluation findings rendered by Drs. Mukkamala and Stoll. Before Dr. Luchs had rendered his findings, Dr. Mukkamala opined in his evaluation report dated May 3, 2018, as follows: "It is my professional opinion that at the time of the incident of 4/20/2018, there was no new injury to the right wrist. The right wrist fracture that the claimant sustained on 1/5/2018 which was in relation to noncompensable injury has not completely healed." Dr. Mukkamala added that "[t]here was no evidence of any new fracture and

therefore there was no evidence of any new injury with relation to the incident of 4/20/2018."

Dr. Stoll, who examined the claimant on January 10, 2019, and reviewed all of the documents discussed above, including Dr. Luchs' four reports, stated that he agreed with Dr. Mukkamala's opinions. More specifically, Dr. Stoll agreed with Dr. Mukkamala's opinion that the claimant did not sustain a second/new right wrist fracture at work on April 20, 2018, an opinion that was confirmed by Dr. Luchs' interpretation of the x-rays taken of the claimant's right wrist on January 5, 2018, March 5, 2018, and April 20, 2018. Conversely, Dr. Stoll disagreed with Dr. McCleary's opinions regarding the claimant's right-wrist fracture, based upon the following: "It is my medical opinion that the claimant's right-wrist fracture had not completely healed by April 2, 2018, and therefore the claimant did not sustain a new right-wrist fracture on April 20, 2018."

Dr. Stoll added that the mechanism of the claimant's alleged injury of April 20, 2018, was inconsistent with the allegation that the claimant had sustained a new right-wrist fracture on such date. More specifically, Dr. Stoll reported, as follows: "Review of mechanism of injury that is reported by the claimant on 4/20/2018 at the ER of simply loosening a bolt, no matter how hard it was fastened, would not have enough mechanical force that would fracture a bone." Further, Dr. Stoll correctly noted that when the claimant was released to return to work in early-April 2018, no x-ray verifying the complete healing of the right-wrist fracture of January 5, 2018, had been taken. In addition, Dr. Stoll noted that Dr. Luchs' interpretation of the claimant's right-wrist x-rays had revealed that the non-compensable fracture of January 5, 2018, had not healed as of April 20, 2018, the date of the claimant's alleged, work-related injury. These facts led Dr. Stoll to conclude, as follows: "Therefore, the mechanism of injury as well as age analysis of the imaging reveals that the original wrist fracture from 1/05/2018 was not completely healed prior to being released to full work

duties."

The claimant's medical records dated from January 5, 2018, to March 5, 2018, and the findings rendered by Drs. Luchs, Mukkamala, and Stoll establish that the claimant did not sustain a discrete new injury at work on April 20, 2018, and, therefore, the carrier correctly denied all requests for workers' compensation benefits made in this claim, pursuant to *Gill v. City of Charleston*, 236 W. Va. 737, 783 S.E.2d 857 (2016). Only Dr. McCleary, who mistakenly released the claimant to return to work in early-April 2018, without having first obtained a negative x-ray, rendered different findings, but even Dr. McCleary hedged his opinion when he testified on November 5, 2018, that "you really couldn't tell" whether the fracture revealed by x-rays taken of the claimant's right wrist on April 20, 2018, was the "same fracture" as the non-compensable fracture sustained by the claimant on January 5, 2018.

Judge Mazezka and the Board of Review committed clear and reversible error by arbitrarily disregarding a clear preponderance of the evidence of record, and their rulings are clearly wrong in view of the reliable, probative and substantial evidence on the whole record. They arbitrarily gave greater evidentiary weight to the equivocal and dubious findings rendered by Dr. McCleary than all of the other evidence of record. Judge Mazezka attempted to justify his arbitrary weighing of evidence upon the fact that Dr. McCleary, a doctor of osteopathic medicine, performs orthopedic surgery, but neither Dr. Mukkamala nor Dr. Stoll does so, and the Board ratified this error. This distinction is irrelevant, as the issues herein have nothing to do with surgery, and, in fact, surgery was only performed following the claimant's non-compensable distal radial fracture of January 5, 2018, and not recommended following the alleged, work-related injury of April 20, 2018. Moreover, Judge Mazezka then inconsistently and arbitrarily disregarded the findings of Dr. Luchs,

a Board-certified radiologist, who unequivocally found that the claimant had sustained an acute fracture of the distal radius (at home) on January 5, 2018, and that this fracture had *not* healed as of April 20, 2018, the date on which the claimant allegedly injured the right wrist at work, and the Board of Review wrongly affirmed such error. Dr. Luchs also unequivocally opined that the abnormalities revealed by the x-rays taken of the claimant's right wrist following the alleged injury of April 20, 2018, including the fracture of the distal radius, dated back to January 5, 2018, and predated the alleged injury of April 20, 2018. Contrary to the arbitrary findings of Judge Mazezka and the Board of Review, Dr. Luchs, the only Board-certified radiologist of record, is more qualified than any of the other physicians of record, including Dr. McCleary, to determine the nature and age of the claimant's distal radius fracture.

Judge Mazezka and the Board of Review also committed clear legal error by failing to apply, or even cite in their respective decisions, *Gill v. City of Charleston*, 236 W. Va. 737, 783 S.E.2d 857 (2016). An aggravation of a non-compensable, preexisting condition, which does not result in a discrete new injury, is not compensable. *See, Gill v. City of Charleston*, 236 W. Va. 737, 783 S.E.2d 857 (2016). The claimant clearly had a non-compensable, preexisting condition--a severe fracture of the right wrist sustained at the claimant's home on January 5, 2018--so the primary issue herein is whether the claimant had sustained a discrete new injury to the right wrist at work on April 20, 2018. The inexplicable failure by Judge Mazezka and the Board of Review to apply *Gill v. City of Charleston*, 236 W. Va. 737, 783 S.E.2d 857 (2016) also constitutes clear and reversible legal error.

CONCLUSION

The claimant sustained a severe fracture to his right wrist when he slipped and fell

at his home on January 5, 2018, and returned to work before his non-compensable injury had healed. He did not sustain a new fracture to his right wrist at work on April 20, 2018, and Judge Mazezka and the Board of Review were clearly wrong to find otherwise. Judge Mazezka and the Board of Review also committed clear error by failing to apply *Gill v. City of Charleston*, 236 W. Va. 737, 783 S.E.2d 857 (2016), and, as the result of their errors, rendered invalid decisions. For these reasons, the Board of Review's invalid order dated November 22, 2019, should be reversed, the carrier's correct rejection order dated May 3, 2018, should be reinstated, and all of the claimant's other protests should be dismissed for being moot.

Respectfully submitted,

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19-1163

SUPREME COURT OF APPEALS OF WEST VIRGINIA
WORKERS' COMPENSATION DOCKETING STATEMENT

Petitioner: Ramaco Resources, Inc. **Respondent:** Charles Rollins

Counsel: Sean Harter **Counsel:** Edwin H. Pancake

Claim No.: 2018024130 **Workers' Compensation Appeal Board No.:** 2054430

Date of Injury/Last Exposure: 4/20/18 **Date Claim Filed:** 5/7/18

Date(s) of Workers' Compensation Division Order(s): 5/3/18, 5/4/18, 5/11/18, 5/14/18, 5/21/18, 5/29/18

Date of Office of Judges Order: 7/1/19

Date of Workers' Compensation Appeal Board Order Appealed from: 11/22/19

CLAIMANT INFORMATION:

Claimant's Name: Charles Rollins

Nature of Injury: Preexisting right-wrist fracture

Age: 56 **Education (highest):** College degree

Occupation: Diesel Mechanic **No. of Years:** Nine months with Ramaco

Date of Last Employment: 4/20/18

Other Claim Nos.: N/A **Status:**
(Attach a separate sheet if necessary)

Are there any related petitions currently pending before the Supreme Court? ☐ Yes ☒ No
(If yes, cite the case name and the manner in which it is related on a separate sheet.)

Are there any other petitions related to this claimant which have been decided by the Supreme Court? (If yes, cite the case name, docket number, decision, and the manner in which it is related on a separate sheet.) ☐ Yes ☒ No

Type of issue:

☐ TTD (Temporary Total Disability) ☐ PPD (Permanent Partial Disability) ☐ PTD (Permanent Total Disability) ☐ Medical Benefits ☐ Occupational Pneumoconiosis ☐ Occupational Hearing Loss ☐ Occupational Disease ☐ Death or Widow Benefits

☒ Other (specify): Compensability of preexisting right wrist fracture

FOR SUPREME COURT USE ONLY	SUPERVISING JUSTICE'S VOTE
I vote: GRANT [ ] REFUSE [ ]	ORAL PRESENTATION [ ]
Signature: _____	Date: _____
Comments:	

FOR SUPREME COURT USE ONLY	REVIEWING JUSTICE'S VOTE
I vote: GRANT [ ] REFUSE [ ]	ORAL PRESENTATION [ ]
Signature: _____	Date: _____
Comments:	

Revised 9/26/97