

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

**Tenise Mabe,  
Claimant Below, Petitioner**

v.) **No. 22-595** (BOR Appeal No. 2057990)  
(JCN: 2020023333)

**West Virginia Parkways Economic Development and Tourism Authority,  
Employer Below, Respondent**

**MEMORANDUM DECISION**

Petitioner Tenise Mabe appeals the decision of the West Virginia Workers' Compensation Board of Review ("Board of Review") dated June 22, 2022. West Virginia Parkways Economic Development and Tourism Authority filed a timely response.<sup>1</sup> The issues on appeal are the claim administrator's decisions denying authorization for a left rotator cuff repair with debridement, decompression, and biceps tenodesis; closing the claim for temporary total disability benefits; and denying the addition of left shoulder scapular winging, a distal supraspinatus tear with impingement, and left superior labral tear as compensable conditions in the claim, which were affirmed by the Workers' Compensation Office of Judges ("Office of Judges") and the Board of Review. Upon our review, we determine that oral argument is unnecessary and that a memorandum decision affirming the Board of Review's decision is appropriate. *See* W. Va. R. App. P. 21.

The claimant, a toll collector, injured her left shoulder in April 2020 while carrying a highway cone. She completed a report of occupational injury with Heather Waddell, NP, who diagnosed an occupational left shoulder injury. Ms. Waddell prescribed physical therapy and noted that the claimant had a prior trapezius tear in 2012 that occurred while she was carrying a plastic file crate.<sup>2</sup> The current claim was held compensable for left shoulder sprain.

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<sup>1</sup>Petitioner, Tenise Mabe, is represented by Reginald D. Henry, and respondent, West Virginia Parkways Economic Development and Tourism Authority, is represented by Jillian L. Moore and Steven K. Wellman.

<sup>2</sup>Treatment notes from Princeton Family Medical from March 2015 through January 2018 show that the claimant reported pain in her left trapezius, left shoulder, and left elbow. The claimant was diagnosed with left trapezius tear, osteoarthritis, cervical strain, and left trapezius strain. She did not file a workers' compensation claim for the 2012 injury.

The claimant sought treatment from Philip Branson, M.D., an orthopedist, after physical therapy provided no symptom relief. Dr. Branson performed a physical examination, reviewed a June 2020 left shoulder MRI, and diagnosed left shoulder scapular winging and a partial tear or a small full-thickness tear of the distal supraspinatus tendon with secondary impingement. He explained that scapular winging can result from a variety of causes including trauma, inflammatory changes, or post-viral syndrome. Dr. Branson opined that the claimant was unable to work.

Dr. Branson completed a diagnosis update in December 2020, requesting that the claim administrator add left shoulder sprain, left shoulder scapular winging, a left distal supraspinatus tear with impingement, and left shoulder pain to the claim. In response, the claim administrator requested a physician review from James Dauphin, M.D. After reviewing the records, Dr. Dauphin recommended that the claim administrator deny the request for additional conditions. He opined that the diagnoses were more likely related to the claimant's 2012 injury and the natural aging process. Dr. Dauphin concluded that the mechanism of injury in this case did not support the requested diagnoses. The claim administrator denied the addition of left shoulder sprain, left shoulder scapular winging, left distal supraspinatus tear with impingement, and left shoulder pain to the claim.

On January 5, 2021, Dr. Branson stated in a letter that the claimant was under his care from November 18, 2020, through January 5, 2021, and was unable to work during that time period. Dr. Branson released the claimant to return to work on January 6, 2021. When she was next treated by Dr. Branson three weeks later, the claimant stated that she had not returned to work. Dr. Branson recommended a work hardening program. He stated that surgery was not recommended in this case because it could increase the claimant's symptoms. The claimant was treated again on February 10, 2021, and reported that she had not returned to work. Dr. Branson gave the claimant a work excuse and referred her for a second opinion. After the claimant completed her work hardening program, she sought a second opinion from orthopedist Joshua Sykes, M.D, and reported that the program did not improve her symptoms. Dr. Sykes performed a physical examination, reviewed the June 2020 MRI, and diagnosed a left shoulder rotator cuff tear. He recommended a left rotator cuff repair with debridement, decompression, and biceps tenodesis.

At the employer's request, Bruce Haupt, M.D., performed a medical evaluation in which he opined that the compensable injury resulted in a left shoulder sprain. He further opined that the claimant's left shoulder scapular winging, rotator cuff tear, and probable labral tear were unrelated to the compensable injury and that they were likely preexisting and the result of the 2012 injury. Dr. Haupt opined that it is highly unlikely that the claimant fully recovered from her 2012 injury and noted that she was treated for pain off and on following the injury. Dr. Haupt explained that left scapular winging was likely the result of the 2012 injury. He opined that the mechanism of the 2020 injury, carrying a highway cone, would not have caused a supraspinatus tear with impingement, and the injury could be the result of the natural aging process or the 2012 injury. Dr. Haupt found that the claimant had reached maximum medical improvement and could return to work on modified duty for six weeks and regular duty thereafter. The claim administrator denied authorization of left rotator cuff repair with debridement, decompression, and biceps tenodesis. The claimant protested the decision.

In response to the claimant's protest, the claim administrator requested that Rebecca Thaxton, M.D., perform a record review to determine if the requested left rotator cuff repair with debridement, decompression, biceps tenodesis, and other procedures should be authorized. Dr. Thaxton opined that surgery should be denied, relying primarily on Dr. Haupt's medical evaluation. The claim administrator then denied authorization of a left rotator cuff repair with debridement, decompression, and biceps tenodesis for the second time, which the claimant protested. On June 13, 2021, the claim administrator closed the claim for temporary total disability benefits stating that it had not received evidence showing the claimant remained temporarily and totally disabled. The claimant protested the decision. The claimant then returned to Dr. Branson who performed a physical examination and then completed a diagnosis update requesting the addition of left superior labral tear to the claim.

In preparation for the Office of Judges' order, the parties simultaneously conducted discovery on the issues of the claim administrator's decisions denying the addition of left shoulder sprain, left shoulder scapular winging, left distal supraspinatus tear with impingement, and left shoulder pain to the claim; denying the addition of left superior labral tear as an additional compensable condition in the claim, all of which the claimant protested. The employer requested that Dr. Thaxton perform a physician review regarding the addition of left shoulder labral tear to the claim. Dr. Thaxton opined that the request was properly denied. In support of her opinion, she noted that Dr. Branson found full range of motion and normal strength in the left shoulder in January 2021, and he opined that the claimant's rotator cuff tear was small and did not require surgery. Dr. Thaxton also noted that Dr. Haupt opined that the left shoulder labral tear was not the result of the compensable injury.

At the request of the employer, David Soulsby, M.D., performed a medical evaluation of the claimant's left shoulder. He diagnosed left wing scapula impingement syndrome and a small left rotator cuff tear; however, he opined that the winged scapula was likely due to the 2012 trapezius strain and impingement is most commonly the result of aging. He asserted that the mechanism of injury, moving a traffic cone, was not consistent with the claimant's symptoms and opined that the left rotator cuff tear was the result of chronic impingement syndrome. Dr. Soulsby concluded that the claimant had reached maximum medical improvement and opined that the requested left shoulder surgery would not be related to the compensable injury.

The Office of Judges affirmed the claim administrator's decisions denying authorization of a left rotator cuff repair with debridement, decompression, and biceps tenodesis; closing the claim for temporary total disability benefits; denying the addition of left shoulder scapular winging, a distal supraspinatus tear with impingement as compensable conditions in the claim; and denying the addition of a left superior labral tear as a compensable condition in the claim. It concluded that the requested additional conditions were the result of the prior 2012 injury and the natural aging process, rather than the compensable injury. The Office of Judges determined that the requested surgery and temporary total disability were the result of noncompensable conditions. The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its order on June 22, 2022.

This Court may not reweigh the evidentiary record, but must give deference to the findings, reasoning, and conclusions of the Board of Review, and when the Board's decision affirms prior rulings by both the Workers' Compensation Commission and the Office of Judges, we may reverse or modify that decision only if it is in clear violation of constitutional or statutory provisions, is clearly the result of erroneous conclusions of law, or is based upon a material misstatement or mischaracterization of the evidentiary record. *See* W. Va. Code § 23-5-15(c) & (d). We apply a de novo standard of review to questions of law. *See Justice v. W. Va. Off. Ins. Comm'n*, 230 W. Va. 80, 83, 736 S.E.2d 80, 83 (2012).

On appeal, petitioner asserts five assignments of error. She argues that the Board of Review was clearly wrong for affirming the Office of Judges' Order, finding the claim was properly closed for temporary total disability benefits, failing to authorize the requested left shoulder surgery, finding that left shoulder scapular winging and distal supraspinatus tear were not the result of the compensable injury, and finding that the left shoulder labral tear is not the result of the compensable injury.

After review, we agree with the reasoning and conclusions of the Office of Judges as affirmed by the Board of Review. The standard for the addition of a compensable condition to a claim is the same as for compensability. For an injury to be compensable it must be a personal injury that was received in the course of employment, and it must have resulted from that employment. *See Barnett v. State Workmen's Comp. Comm'r*, 153 W. Va. 796, 172 S.E.2d 698 (1970). The claimant has requested the addition of left shoulder scapular winging, a distal supraspinatus tear with impingement, and a left superior labral tear to the claim. A preponderance of the evidence indicates the conditions are not the result of the compensable injury. Drs. Dauphin, Haupt, and Soulsby all opined that the mechanism of injury would not cause the requested conditions. They all also opined that the conditions were likely the result of degeneration and the claimant's prior 2012 injury, and treatment notes show that the claimant suffered from left shoulder pain prior to the compensable injury.

Regarding the requested medical treatment, West Virginia Code § 23-4-3(a)(1) states that the claim administrator must provide medically related and reasonably required "sums for healthcare services, rehabilitation services, durable medical and other goods, and other supplies[.]" The requested left rotator cuff repair with debridement, decompression, and biceps tenodesis is aimed at treating the preexisting and degenerative conditions that were ruled noncompensable. Because the addition of those conditions has been denied, the claim administrator also properly denied treatment for the conditions. The closure of the claim for temporary total disability benefits was properly denied for the same reason. The claimant's continued inability to work is not the result of the compensable injury but rather the result of noncompensable conditions. Pursuant to West Virginia Code § 23-4-7a, temporary total disability benefits will cease when the claimant has reached maximum medical improvement, has been released to return to work, or has returned to work, whichever occurs first. Dr. Haupt found that the claimant reached maximum medical improvement for the compensable injury in March 2021. The claim was therefore properly closed for temporary total disability benefits. For the foregoing reasons, we affirm the decision of the Board of Review.

Affirmed.

**ISSUED: March 20, 2024**

**CONCURRED IN BY:**

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