

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

**Christopher Wright,
Claimant Below, Petitioner**

v.) **No. 22-618** (BOR Appeal No. 2056742)
(JCN: 2019011397)

**Spartan Mining Company, c/o ANR,
Employer Below, Respondent**

MEMORANDUM DECISION

Petitioner Christopher Wright appeals the decision of the West Virginia Workers' Compensation Board of Review dated June 22, 2022, that affirmed the Workers' Compensation Office of Judges order entered on April 15, 2021. The Office of Judges order affirmed earlier claim administrator decisions that denied the petitioner's request to add his left shoulder pain and labrum tear as compensable components of the claim and his request to refer him to an orthopedist to address the complaints related to his left shoulder.¹ Petitioner's two general assignments of error—that the Board of Review erred as a matter of law and that the Board of Review erred as a matter of fact—challenge both the rejection of left shoulder issues and the denial of orthopedic treatment. Upon our review, we determine that oral argument is unnecessary and that a memorandum decision is appropriate.² *See* W. Va. R. App. Proc. 21.

In November 2018, the petitioner submitted a claim report asserting that he was injured in a mantrip collision three months earlier while working as a roof bolter with Alpha Natural Resources.³ Larry Leslie, M.D., who completed the physician's portion of the form, diagnosed cervicalgia, left shoulder pain, and radiculopathy of the cervical region. (The employer's internal injury report, prepared on the date of the injury, reflects that the petitioner initially reported only

¹ We note that the Board of Review purported to modify the Office of Judges order. The specific modifications identified were not substantive and were likely intended to address typographical errors in the Office of Judges' decision.

² The petitioner appears by counsel J. Robert Weaver. Respondent Spartan Mining Company appears by counsel Sean Harter.

³ The relationship between Alpha Natural Resources and the respondent is not apparent on the face of the appendix record on appeal. According to the United States Securities and Exchange Commission website, both likely are or were subsidiaries of Alpha Metallurgical Resources, Inc.

that his neck was injured.) Petitioner submitted his claim for benefits with the support of Dr. Leslie's opinion. The following month, in December 2018, the claim administrator ruled the petitioner's claim compensable for cervical spine ligament sprain only. It explicitly excluded other conditions, including left shoulder pain, from compensability. The petitioner did not protest the claim administrator's ruling.

The petitioner continued under Dr. Leslie's care for various complaints including those related to his shoulder. In or around May 2019, the petitioner forwarded the claim administrator a request for authorization for orthopedic treatment, which the claim administrator denied by letter dated July 31, 2019, on the ground that the petitioner's left shoulder complaints were noncompensable.⁴ Later, in March 2020, Ryan Donegan, M.D., completed a "diagnosis update" form expressing his opinion that the petitioner's work-related injury "likely resulted in a shoulder subluxation which precipitated a labrum tear with progressive cartilage changes and development of arthropathy." In apparent reliance on this form, the petitioner requested that the diagnoses of left shoulder pain and left shoulder labrum tear be ruled compensable claim components.⁵ The

⁴ The petitioner's authorization request, as well as several other documents that would elucidate the history of the petitioner's claim, are not included in the appendix record on appeal. Rule 12(f) of the West Virginia Rules of Appellate Procedure instructs that "[t]he appendix must also include all relevant medical reports, psychological reports, vocational reports, transcripts, correspondence, orders, and other written material that is necessary for a fair consideration of the issues on appeal."

Furthermore, Rule 12(e) instructs that briefs filed in workers' compensation appeals must follow the format prescribed by Rule 10. Rule 10(c)(7) states that

[t]he brief must contain an argument clearly exhibiting the points of fact and law presented, the standard of review applicable, and citing the authorities relied on . . . [and] must contain appropriate and specific citations to the record on appeal The Intermediate Court and the Supreme Court may disregard errors that are not adequately supported by specific references to the record on appeal.

The petitioner's brief is devoid of any citation to the appendix record on appeal, and numerous statements set forth in the respondent's brief are unsupported. We caution the attorneys to adhere to the Rules of Appellate Procedure.

⁵ The petitioner's left shoulder pain, in isolation, is not a compensable component of his injury.

This Court has consistently held that pain is a symptom, not a diagnosis. *See Harpold v. City of Charleston*, No. 18-0730, 2019 WL 1850196 at *3 (W. Va. Apr. 25, 2019) (memorandum decision) (holding that left knee pain is a symptom, not a diagnosis, and therefore cannot be added to a claim), *Radford v. Panther Creek Mining, LLC*, No. 18-0806, 2019 WL 4415245 at *3 (W. Va. Sep. 13, 2019) (memorandum decision) (holding that neck and shoulder pain cannot be added to a claim as they are symptoms, not diagnoses).

claim administrator denied this request by letter dated March 19, 2020. In the denial letter, the claim administrator explained that it relied on a 2019 report submitted by Dr. Ronald J. Fadel stating that the petitioner did not injure his left shoulder in his August 2018 work-related accident. There is no dispute that the petitioner timely protested the July 31, 2019, and March 19, 2020, claim administrator decisions.

After a period of litigation, an administrative law judge with the Office of Judges reviewed the parties' evidence, including reports of examinations and medical reviews performed by several physicians. While acknowledging Dr. Donegan's requested diagnoses, the administrative law judge also found that Dr. Donegan diagnosed the petitioner with glenohumeral arthritis (a condition that was noted as being inconsistent with a left labrum tear) after completing the diagnosis update form. The administrative law judge noted that two other physicians opined that the petitioner suffered from arthropathy or arthritis. The administrative law judge found that there was "considerable likelihood that the claimant's left shoulder problems preexisted the compensable injury and are related to degenerative arthritis" and, further, that if the petitioner suffered a left labrum tear, the etiology of the tear was not established by the evidence. On this basis, the Office of Judges affirmed the claim administrator's denial of the addition of a compensable component of the injury and the denial of authorization for orthopedic treatment. The petitioner appealed the Office of Judges' decision, and the Board of Review affirmed it.

Our standard of review for the petitioner's appeal of the Board of Review order is well-known. 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. of Ins. Comm'n*, 230 W. Va. 80, 83, 736 S.E.2d 80, 83 (2012).

On appeal, the petitioner argues that he reported neck and left shoulder pain immediately following his injury, and that his pain is unresolved. He further argues that the opinions of Dr. Leslie—who noted the petitioner's report of left shoulder pain on the initial injury report—and Dr. Donegan are paramount. As the respondent points out, however, the administrative law judge also considered the reports of at least two other physicians who diagnosed only degenerative or arthritic changes. Critically, we note the administrative law judge's acknowledgement that the petitioner's initial report to his employer was that he sustained a neck injury, and that there is no evidence that Dr. Leslie evaluated the petitioner until approximately two months after he sustained his work-related injury. We further note that the administrative judge, when cataloging the evidence submitted by the parties, referred to a report of a physical examination that the petitioner underwent on June 11, 2018 (more than two months prior to his work-related injury), and the report

Whitt v. US Trinity Energy Servs., LLC, No. 20-0732, 2022 WL 577587, at *3 (W. Va. Feb. 25, 2022) (memorandum decision). The petitioner has made no argument and cited no authority that would compel us to depart from this principle under the facts presented.

memorialized the petitioner’s complaint of “neck and left shoulder pain.”⁶ In light of this evidence and more that was adequately weighed by the administrative law judge, and affording due deference to the administrative law judge’s weighing of the evidence, we find that the Office of Judges order was supportable on the record it considered. Consequently, we find no error in the Board of Review’s order affirming the Office of Judges.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: April 30, 2024

CONCURRED IN BY:

Chief Justice Tim Armstead
Justice Elizabeth D. Walker
Justice C. Haley Bunn

DISSENTING:

Justice John A. Hutchison
Justice William R. Wooton

Hutchison, Justice and Wooton, Justice, dissenting:

We dissent to the majority’s resolution of this case. We would have set this case for oral argument to thoroughly address the error alleged in this appeal. Having reviewed the parties’ briefs and the issues raised therein, we believe a formal opinion of this Court was warranted, not a memorandum decision. Accordingly, we respectfully dissent.

⁶ The respondent aptly relates that when the petitioner was asked whether he suffered pain or problems in his left shoulder prior to his work-related injury, he denied that he had such problems or that he sought prior treatment for his left shoulder. The administrative law judge did not discuss the apparent inconsistency.