

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

**RAMACO RESOURCES, INC.,
Employer Below, Petitioner**

v.) No. 23-ICA-513 (JCN: 2021008526)

**NICHOLAS GRIMMETT,
Claimant Below, Respondent**

**FILED
April 22, 2024**

ASHLEY N. DEEM, DEPUTY CLERK
INTERMEDIATE COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Ramaco Resources, Inc. (“Ramaco”) appeals the October 17, 2023, order of the Workers’ Compensation Board of Review (“Board”). Respondent Nicholas Grimmatt filed a response.¹ Ramaco did not file a reply. The issue on appeal is whether the Board erred in reversing the claim administrator’s order, which denied authorization for a referral to a nutritionist/dietician for a consultation.

This Court has jurisdiction over this appeal pursuant to West Virginia Code § 51-11-4 (2022). After considering the parties’ arguments, the record on appeal, and the applicable law, this Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision affirming the Board’s order is appropriate under Rule 21 of the Rules of Appellate Procedure.

On October 15, 2020, while employed by Ramaco, Mr. Grimmatt suffered a crushing injury when he was hit by a boulder. Medical records from Morgan Copeland, PA-C, dated October 16, 2020, indicate that Mr. Grimmatt was intubated and treated pursuant to a mass transfusion protocol, that he had an emergent splenectomy and vascular surgery where a branch of the internal iliac artery was embolized, and that he remained hemodynamically unstable and in critical condition. PA Copeland noted that Mr. Grimmatt’s orthopedic injuries included a right hip dislocation with associated anterior column and posterior column acetabulum fracture, left superior and inferior pubic rami fractures, left sacroiliac joint widening, right inferior pubic ramus fracture, and left distal third tibia and fibula deformity.

The claim administrator issued an order dated October 28, 2020, holding the claim compensable for right hip dislocation, right anterior column acetabulum fracture, right distal fibula and tibia fractures, left sacroiliac joint widening, left superior and inferior

¹ Ramaco is represented by Jeffrey B. Brannon, Esq. Mr. Grimmatt is represented by Robert F. Vaughan, Esq.

pubic rami fracture non operative, right inferior pubic ramus fracture non operative, left pilon and associated fibula fracture which will require open reduction internal fixations, and spleen surgically removed.

On January 20, 2023, Christopher Tipton, PA-C, requested authorization for a referral to a nutritionist/dietician for obesity for Mr. Grimmatt.² On February 3, 2023, the claim administrator issued an order denying authorization for a referral to a nutritionist/dietician for a consultation due to a finding that the request was not medically related nor reasonably necessary to treat the compensable conditions in this claim. Mr. Grimmatt protested this order.

Mr. Grimmatt was seen by Sandra Elliot, M.D., on March 27, 2023, for follow-up of enterocolic (“EC”) fistula and septic right hip. Mr. Grimmatt reported that he had been seen recently for consideration of colostomy reversal and ventral hernia repair. Dr. Elliot noted that Mr. Grimmatt was doing well with ambulation with no right hip pain and that there was intermittent drainage from the abdominal wound (i.e., EC fistula) with no redness or pain. Dr. Elliot’s impression was EC fistula, infection of right prosthetic hip joint, and history of clostridium difficile infection. Mr. Grimmatt’s weight was recorded at 239.2 pounds.

On March 22, 2023, PA Tipton, authored correspondence stating that Mr. Grimmatt had gained weight after his last hip surgery, he was unable to exercise due to his injury, and he had an increase in cholesterol related to his weight gain. PA Tipton opined that Mr. Grimmatt needed a referral to a dietician/nutritionist for help in managing his weight.

On October 17, 2023, the Board reversed the claim administrator’s order, which denied authorization for a referral to a nutritionist/dietician for a consultation. The Board found that the request for a referral to a nutritionist/ dietician was medically related and reasonably necessary medical treatment for the compensable injuries. Ramaco now appeals the Board’s order.

Our standard of review is set forth in West Virginia Code § 23-5-12a(b) (2022), in part, as follows:

The Intermediate Court of Appeals may affirm the order or decision of the Workers’ Compensation Board of Review or remand the case for further proceedings. It shall reverse, vacate, or modify the order or decision of the Workers’ Compensation Board of Review, if the substantial rights of the petitioner or petitioners have been prejudiced because the Board of Review’s findings are:

- (1) In violation of statutory provisions;

² This request was not submitted into the record.

- (2) In excess of the statutory authority or jurisdiction of the Board of Review;
- (3) Made upon unlawful procedures;
- (4) Affected by other error of law;
- (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.

Duff v. Kanawha Cnty. Comm'n, 247 W. Va. 550, 555, 882 S.E.2d 916, 921 (Ct. App. 2022).

On appeal, Ramaco argues that the requested referral to a nutritionist/dietician is not medically related nor reasonably necessary and that Mr. Grimmatt's obesity preexisted and was not caused by the compensable injuries in this claim. Further, Ramaco argues that the Board ignored evidence establishing that Mr. Grimmatt weighed more prior to the injury than he does now, that Mr. Grimmatt has a history of high cholesterol, and that obesity is not a compensable condition in the claim. We disagree.

The claim administrator must provide a claimant with medically related and reasonably necessary treatment for a compensable injury. *See* West Virginia Code § 23-4-3 (2005) and West Virginia Code of State Rules § 85-20 (2006).

Here, the Board found that a referral to a nutritionist/dietician was medically related and reasonably necessary medical treatment for the compensable injuries. The Board noted that Mr. Grimmatt suffered a serious crush injury that resulted in him undergoing multiple surgeries. The Board further found that the medical records indicate that Mr. Grimmatt had gained weight because he was unable to exercise due to his compensable injuries and that he needed a referral to a dietitian/ nutritionist for help in managing his weight.

Upon review, we find that the Board was not clearly wrong in finding that the evidence supported that a referral to a nutritionist/dietician was medically related and reasonably necessary medical treatment for Mr. Grimmatt's compensable injuries. As the Supreme Court of Appeals of West Virginia has set forth, "[t]he 'clearly wrong' and the 'arbitrary and capricious' standards of review are deferential ones which presume an agency's actions are valid as long as the decision is supported by substantial evidence or by a rational basis." Syl. Pt. 3, *In re Queen*, 196 W. Va. 442, 473 S.E.2d 483 (1996). With this deferential standard of review in mind, we cannot conclude that the Board was clearly wrong in reversing the claim administrator's order, which denied authorization for a referral to a nutritionist/dietician for a consultation. We find that Ramaco failed to establish that the Board was clearly wrong in its weighing of the evidence. The fact that Ramaco may not agree with the Board's weighing of the evidence does not create reversible error.

Accordingly, we affirm the Board's October 17, 2023, order.

Affirmed.

ISSUED: April 22, 2024

CONCURRED IN BY:

Chief Judge Thomas E. Scarr
Judge Charles O. Lorensen
Judge Daniel W. Greear