

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

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

v.) **No. 24-ICA-72** (JCN: 2023008854)

**DANIELLE GOFF,
Claimant Below, Respondent**

**FILED
July 30, 2024**

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

MEMORANDUM DECISION

Petitioner ACNR Resources, Inc. (“ACNR”) appeals the January 29, 2024, order of the Workers’ Compensation Board of Review (“Board”). Respondent Danielle Goff filed a response.¹ ACNR did not reply. The issue on appeal is whether the Board erred in reversing the claim administrator’s order, which denied authorization for physical therapy.

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 24, 2022, Ms. Goff’s right leg was injured when a rail track weighing approximately one ton fell onto her right leg. Ms. Goff arrived at Ruby Memorial Hospital ER by ambulance and was examined by David Hubbard, M.D., an orthopedist. Dr. Hubbard opined that x-rays showed fracture of right tibia, fibula, and ankle. Dr. Hubbard performed surgery on the same day with intramedullary nailing of the right tibia fracture and right distal fibula fracture for the diagnoses of right tibia and fibula shaft fracture and right distal fibula fracture.

Ms. Goff completed an Employees’ and Physicians’ Report of Occupational Injury or Disease (“WC-1”) form on the same day. Dr. Hubbard completed the Physicians’ section of the form on November 7, 2022, and identified the diagnosis as a right tibia fracture and a right fibula fracture. On November 9, 2022, Dr. Hubbard noted that Ms. Goff was two weeks out from surgery and that she had been doing very well overall. Ms. Goff was given

¹ ACNR is represented by Aimee M. Stern, Esq. Danielle Goff is represented by Christopher J. Wallace, Esq.

a referral for physical therapy (“PT”) and she was advised to start working on some range of motion exercises on her own and progressing as pain allows. It was anticipated that she would remain off work for approximately three months after surgery.

Ms. Goff was seen by Michelle Bramer, M.D., an orthopedist, on April 24, 2023. Ms. Goff was six months out from her surgery, and she was participating in PT. Dr. Bramer found that Ms. Goff’s fibula fracture did not heal and was continuing to cause pain and problems. Dr. Bramer performed an open reduction and internal fixation for a right fibula nonunion on May 16, 2023. Ms. Goff was given an order for PT to work on range of motion, strength, balance, endurance, and gait training.

On August 11, 2023, Dr. Bramer noted that Ms. Goff was three months out from the second surgery. Ms. Goff reported some numbness on the top of her foot and some anterior knee pain. Dr. Bramer opined that the tibia was well healed, the distal fibula had healed, and the fibular nonunion had progressed significantly and was nearly healed as well. Dr. Bramer indicated that Ms. Goff should continue with PT as she likely had quad atrophy, VMO atrophy, and some patellofemoral syndrome type symptoms. Dr. Bramer stated that, when Ms. Goff returned in one month, she may be able to start with work conditioning or hardening. Dr. Bramer opined that Ms. Goff would be able to do light duty including sedentary or office-type work, but that she should not do any heavy lifting or squatting at this time.

Ms. Goff’s PT records from Country Roads Physical Therapy & Rehabilitation begin on September 6, 2023.² Amy Manning, DPT, noted that Ms. Goff continued to have knee pain with weight-bearing and hyperextension, but she had improvement in lower leg symptoms and improvement with quad strengthening. On September 7, 2023, Ms. Goff reported that she continued to improve overall, but she continued to have anterior knee pain with weight bearing and walking a long distance bothered her knee. Ms. Manning opined that she would benefit from continued skilled PT care to strengthen the right lower extremity most notably in the quad and hip to improve symptoms, function, and quality of life. Ms. Manning indicated that Ms. Goff had been seen in the clinic for forty-four visits to date and that she remained compliant and motivated with PT. Ms. Goff’s PT records from September and October 2023, indicate that she continued to improve and seemed to be benefitting from her participation in PT.

Ms. Goff returned to Dr. Bramer’s office on September 11, 2023, and reported that she thought the PT had been helping her. Ms. Goff further reported that she still had some leg pain and weakness and numbness over the dorsum of the foot. Dr. Bramer noted that Ms. Goff had full knee range of motion and could fully extend and flex the knee, but that there was some obvious quad atrophy. An x-ray obtained on that same day showed intact surgical hardware

² This was not Ms. Goff’s first PT visit; however, prior PT records were not submitted into the record below.

with overall progression of healing of the right tibia-fibula. Dr. Bramer opined that overall, Ms. Goff was progressing well at that point, but she should continue working with PT, especially for her quad strength. A referral was given for PT and/or conditioning.

On October 3, 2023, Prasadarao Mukkamala, M.D., evaluated Ms. Goff and issued a report. Dr. Mukkamala noted that Ms. Goff was injured at work on October 24, 2022, when she was struck by a rail injuring her right leg and that she underwent surgery with intramedullary nail on October 24, 2022, for fracture of the tibia and fibula. Dr. Mukkamala further noted that the fibula fracture resulted in nonunion, and Ms. Goff underwent a second surgery on May 16, 2023. Ms. Goff reported pain in the right knee and a limp during walking. Dr. Mukkamala stated that a physical examination of the lower extremities revealed slight limitation of motion at the right foot with inversion and eversion, the sensory examination revealed diminution of sensation in the distribution of the right superficial peroneal nerve, and there was no deformity and no instability in the right lower extremity. Dr. Mukkamala concluded that Ms. Goff was at MMI from the October 24, 2022, compensable injury, and he opined that she did not require any additional diagnostic studies and/or treatment other than one or two more office visits with her surgeon, Dr. Bramer. The claim administrator issued an order dated October 10, 2023, denying authorization for additional PT therapy based on Dr. Mukkamala's October 3, 2023, finding that Ms. Goff was at MMI. Ms. Goff protested this order.

On October 13, 2023, Ms. Goff returned for a follow-up with Dr. Bramer. Ms. Goff was five months out from her second surgery. Ms. Goff reported that she continued to have pain along her anterior knee and swelling at the end of the day, she also continued to have tingling sensations across the top of her right foot. Dr. Bramer noted that the x-ray of the tibia-fibula showed that the fibula fracture had healed, the hardware was stable without sign of loosening or failure, and the previous tibia fracture had also healed. Dr. Bramer encouraged Ms. Goff to continue working on quad strengthening exercises on her own, use topical pain medications, and consider a compression stocking to help with swelling control. Ms. Goff was released to return to work with no restrictions on October 16, 2023.

On January 29, 2024, the Board reversed the claim administrator's order which denied authorization for physical therapy. The Board found that the evidence established that the requested PT and/or work conditioning was reasonable and necessary treatment for the compensable conditions. ACNR 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) 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.

ACNR argues that the Board erred in relying upon Dr. Bramer's and Ms. Manning's orders for PT when the information contained within their notes clearly demonstrates that Ms. Goff was ready and able to return to work with no restrictions, had no abnormal exam findings, was able to continue with a home exercise program, and required no further treatment from Dr. Bramer.

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 Ms. Goff had established with medical evidence that PT and/or work conditioning was medically related and reasonably necessary treatment for her compensable injuries. The Board further found that Ms. Goff's treating surgeon, Dr. Bramer, and the treating physical therapist, Ms. Manning, are in a better position to determine her need for continued medical treatment than a physician who evaluated the claimant on one occasion. Further, the Board noted that Dr. Mukkamala had not reviewed Dr. Bramer's more recent recommendation for continued PT, and he had not reviewed the PT records. The Board also noted that the PT progress notes documented consistent improvement with treatment, as well as compliance and motivation. The Board further noted that the physical therapist and Dr. Bramer believed that Ms. Goff could continue to improve with PT and work conditioning.

Upon review, we find that the Board was not clearly wrong in finding that Ms. Goff had established with medical evidence that PT and/or work conditioning was medically related and reasonably necessary treatment for her 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 orders denying additional PT and/or work conditioning.

Accordingly, we affirm the Board's January 29, 2024, order.

Affirmed.

ISSUED: July 30, 2024

CONCURRED IN BY:

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