

**STATE OF WEST VIRGINIA
WORKERS' COMPENSATION BOARD OF REVIEW**

PATRICK CASE,
Appellant

v.

DOSS ENTERPRISES LC,
Appellee

Appeal No: 2058600
JCN: 2021012556
DOI 12/09/2020

ORDER

The following case is an appeal by the claimant from a final order of the Workers' Compensation Office of Judges dated April 7, 2021, which affirmed the claims administrator's four orders dated December 22, 2020, rejecting the claim and denying the requests for authorization of an orthopedic appointment, a custom molded clamshell right leg brace, and surgery to repair the right quadriceps tendon rupture.

The Workers' Compensation Board of Review has completed a thorough review of the record, briefs, and arguments. As required, the Workers' Compensation Board of Review has evaluated the decision of the Office of Judges in light of the standard of review contained in West Virginia Code § 23-5-12, as well as the applicable statutory language as interpreted by the West Virginia Supreme Court of Appeals. Upon our review of this case, we have determined to reverse the decision of the Office of Judges, as the substantial rights of the claimant have been prejudiced.

FINDINGS OF FACT:

The Board adopts the final order's Findings of Fact with the following modifications:



1. In Finding of Fact No. 9, the evidence is located in the electronic claim file under the date of December 9, 2020.
2. In Finding of Fact No. 12, the evidence is located in the electronic claim file under the date of March 8, 2013.

DISCUSSION:

The Board finds the final order's analysis and conclusions are affected by error of law and clearly wrong in view of the reliable, probative and substantial evidence on the whole record. On December 9, 2020, the claimant, a CDL driver, was preparing his truck to haul asphalt. He went up a set of stairs to a platform in order to treat the bed of the truck to keep the asphalt from sticking to it. When he was coming back down the stairs, he fell and landed with his right leg underneath him. The employer's Incident Form (found in the electronic claim file under the date of December 17, 2020) describes the platform as a catwalk that the Plant installed to allow drivers to get to higher ground to spray the beds of the trucks. The catwalk has 10 stairs. After the claimant fell, he was transported to United Hospital Center where he was diagnosed with a right knee muscle/tendon rupture.

The Administrative Law Judge found the claimant's injury was idiopathic in nature and affirmed the rejection of the claim. However, according to the Supreme Court's holding in the case of Ware v. State Workmen's Compensation Commissioner, 234 S.E.2d 778 (W. Va. 1977): "Where a prior disease or condition causes an employee to fall or lose consciousness, and as a result of such fall or loss of

consciousness the employee sustains injuries which he probably would not have sustained had the same fall or loss of consciousness occurred away from the hazards of the place of employment, the accident is compensable." Further, the Court stated: "We join the majority of enlightened jurisdictions which agree on the basic rule that the effects of idiopathic falls 'are compensable if the employment places the employee in a position increasing the dangerous effects of such a fall, such as on a height, near machinery or sharp corners, or in a moving vehicle.' 1 Larson, *The Law of Workmen's Compensation*, § 12.11 (1972)." *Id.* at 779.

In the instant claim, the claimant's employment, which required him to go up a set of stairs to a catwalk and then come back down the stairs, placed him in a position increasing the dangerous effects of an idiopathic fall. The medical provider from United Hospital Center who completed the claim application diagnosed a right knee muscle/tendon rupture and found that the condition is a direct result of an occupational injury. The medical provider referred the claimant to Dr. Courtney, who is with United Hospital Center Orthopaedics & Sports Medicine.

After considering the case law and the evidence, the Board concludes that the claimant was injured in the course of and resulting from his employment. Consequently, three treatment requests must be considered. The report from the Emergency Department at United Hospital Center on December 9, 2020, indicates that the medical provider spoke with Dr. Courtney, who recommended a knee immobilizer and outpatient follow up. On December 10, 2020, Justin Brewer, PA-C, and

Dr. Courtney examined the claimant and recommended surgical intervention to repair the right quadriceps tendon rupture. Also, they recommended a custom molded hinged clamshell right leg brace. The Board concludes that the orthopedic appointment with Dr. Courtney and Mr. Brewer, the custom molded hinged clamshell right leg brace, and the surgery to repair the right quadriceps tendon rupture are medically necessary and reasonably required in the course of treatment for the compensable injury.

CONCLUSIONS OF LAW:

Accordingly, it is hereby ORDERED as follows:

1. The final order of the Workers' Compensation Office of Judges dated April 7, 2021, is REVERSED and VACATED.
2. The claim is HELD COMPENSABLE for a right quadriceps tendon rupture.
3. The requests for authorization of an orthopedic appointment, a custom molded hinged clamshell right leg brace, and surgery to repair the right quadriceps tendon rupture are GRANTED.
4. The claim is REMANDED to the claims administrator with instructions to issue a protestable order addressing the claimant's entitlement to temporary total disability benefits.


From any final decision of the Board, including any order of remand, an application for review may be prosecuted by any party to the Supreme Court of Appeals within thirty days from the date of this order. The appeal shall be filed with Edythe Nash

PATRICK CASE

Appeal No. 2056600

Gaiser, Clerk of the West Virginia Supreme Court of Appeals, 1900 Kanawha
Boulevard, East, Charleston, West Virginia 25305.

DATED: October 26, 2021


Nick Casey, Chairperson

cc: PATRICK CASE
ROBERT L. STULTZ
DOSS ENTERPRISES LC
JANE ANN PANCAKE
ERIE INSURANCE

