

**IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA**

**GAS FIELD SERVICES, LLC,  
Employer Below, Petitioner**

v.) No. 24-ICA-171 (JCN: 2022005472)

**JOHN MOATS,  
Claimant Below, Respondent**

**FILED  
October 28, 2024**

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

**MEMORANDUM DECISION**

Petitioner Gas Field Services, LLC, (“GFS”) appeals the March 20, 2024, order of the Workers’ Compensation Board of Review (“Board”). Respondent John Moats filed a response.<sup>1</sup> GFS did not reply. The issue on appeal is whether the Board erred in reversing the claim administrator’s order, which denied authorization for a right shoulder diagnostic arthroscopy with debridement and distal clavicle excision with reconstruction of the AC joint.

This Court has jurisdiction over this appeal pursuant to West Virginia Code § 51-11-4 (2024). 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 September 15, 2021, while employed by GFS, Mr. Moats suffered the compensable injury. On January 25, 2022, Mr. Moats underwent a right shoulder MRI, revealing complete tears of the acromioclavicular (“AC”) and coracoclavicular ligamentous components with fairly significant superior displacement of the right distal clavicle reflecting at least a grade 3, if not a grade 5 acromioclavicular separation, maceration and large undersurface partial tear of the anterior supraspinous tendon footprint, fatty infiltration/atrophy of the teres minor muscle, possibly related to quadrilateral space syndrome, and suspected SLAP type 4 lesion. The claim administrator issued an order dated July 30, 2022, holding the claim compensable for a separation of right shoulder muscle, a scalp laceration, a laceration of the right little finger without damage to the nailbed, a cervical sprain, and a lumbar sprain.

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<sup>1</sup> GFS is represented by Jeffrey B. Brannon, Esq. John Moats is represented by J. Thomas Greene, Jr., Esq., and T. Colin Greene, Esq.

GFS submitted surveillance videos of Mr. Moats from April 20, and 27, 2022, approximately seven months after the injury. The Board described the videos as follows: the April 20, 2022, video shows Mr. Moats driving an SUV, taking mail from a mailbox, removing a jacket, and operating a pressure washer; and on April 27, 2022, Mr. Moats was seen carrying a heavy object and working on a Bobcat.

On June 21, 2022, David Soulsby, M.D., issued a report indicating that he had reviewed the surveillance video and that much of it was innocuous and did not shed significant light on the claim. However, Dr. Soulsby noted that there were a few occasions when Mr. Moats was seen performing activities inconsistent with the symptoms that he had described. Dr. Soulsby opined that Mr. Moats demonstrated the ability to use his right upper extremity in various surveillance video clips, suggesting that he is doing reasonably well with his right shoulder and demonstrating that he can use his right upper extremity much better than what he had reported. Dr. Soulsby stated that there are occasions when a grade 3 AC separation heals and becomes relatively asymptomatic and that Mr. Moats' ability to use his right upper extremity suggests that this is probably the case. Based on the video, Dr. Soulsby opined that Mr. Moats was at maximum medical improvement ("MMI") and that the surgery he had previously recommended did not appear to be necessary.<sup>2</sup>

Mr. Moats was seen by Benjamin Moorehead, M.D., on October 3, 2022. Dr. Moorehead felt that the instability of the AC joint was causing Mr. Moats' current symptoms and that this was consistent with the restrictions he demonstrated on a functional capacity evaluation. Further, Dr. Moorehead noted that the functional capacity evaluation placed Mr. Moats at a "medium" physical capacity level, which did not meet the requirements of Mr. Moats' current job. However, Dr. Moorehead noted a previous surgical opinion by a physician who did not feel surgery would be of benefit.<sup>3</sup> Dr. Moorehead planned to request a consultation for consideration of an AC joint stabilization and, if a second surgeon opined that the surgery would not likely help, he would recommend work conditioning and placing Mr. Moats at MMI.

On November 10, 2022, Mr. Moats was seen by George Bal, M.D., for a second opinion about treatment options for his right shoulder AC dislocation and right arm numbness and tingling. Mr. Moats reported pain around the right AC joint and a feeling of the joint popping in and out of place. Mr. Moats noted pain when performing overhead activities and numbness and tingling from his right elbow through his forearm and into his fingers. Dr. Bal recommended a right shoulder diagnostic arthroscopy with debridement and distal clavicle excision with reconstruction of the AC joint using allograft tendon. Dr. Bal explained that this surgery would primarily help with Mr. Moats' pain and instability

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<sup>2</sup> Dr. Soulsby's initial report does not appear in the Board's record.

<sup>3</sup> This surgical opinion was not submitted into the Board's record.

around the right AC joint but would not relieve the numbness and tingling in his right arm. Mr. Moats told Dr. Bal that numbness and tingling were his main complaints, that he was unsure whether he wanted to proceed with the surgery, and that he would contact Dr. Bal if he decided to proceed with the surgery. On February 8, 2023, Dr. Bal requested authorization for a right shoulder arthroscopy with debridement and reconstruction of the AC joint using allograft tendon. On June 1, 2023, the claim administrator issued an order denying authorization for the requested surgery.

Mr. Moats was deposed on August 9, 2023. Mr. Moats testified that he was injured on September 15, 2021, when driving a water truck and was struck by another vehicle causing him to go over an embankment. Mr. Moats also explained that he had no problem with his right shoulder prior to this accident. According to Mr. Moats, Dr. Moorehead recommended shoulder surgery, but would not do it because the numbness and tingling were worse when he saw him. Mr. Moats testified that Dr. Bal recommended surgery for the problems he was having at the time of his examination on November 10, 2022, but that Dr. Bal did not know if the surgery would help the tingling and numbness.

On March 20, 2024, the Board reversed the claim administrator's order, which denied authorization for a right shoulder diagnostic arthroscopy with debridement and distal clavicle excision with reconstruction of the AC joint. The Board found that Mr. Moats established that the right shoulder diagnostic arthroscopy with debridement and distal clavicle excision with reconstruction of the AC joint using allograft tendon is medically related and reasonably required for treatment of his compensable injury. GFS 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.

Syl. Pt. 2, *Duff v. Kanawha Cnty. Comm'n*, \_\_W. Va. \_\_, 905 S.E.2d 528 (2024).

GFS argues that the evidence establishes that Mr. Moats' compensable injury reached MMI on June 21, 2022. GFS further argues that the requested surgery is neither medically necessary nor reasonably required to treat Mr. Moats' compensable injury because only Dr. Bal recommended the surgery, and he was unsure whether the surgery would benefit him. We disagree.

Here, the Board found that Mr. Moats established that the right shoulder diagnostic arthroscopy with debridement and distal clavicle excision with reconstruction of the AC joint using allograft tendon is medically related and reasonably required for treatment of his compensable injury. The Board reviewed the video evidence referenced by Dr. Soulsby and found that Dr. Soulsby's opinion was not persuasive. The Board noted that Dr. Bal opined that shoulder surgery was necessary to address Mr. Moat's AC joint instability and related pain and found that Dr. Bal's opinion was persuasive. GFS's assertion that Dr. Moorehead did not recommend the surgery is misleading. Dr. Moorehead sought a second surgical opinion about the shoulder surgery and only indicated that if the second opinion confirmed that surgery would not be of benefit, he would proceed with an alternative treatment plan. Dr. Moorehead did not state that he did not recommend the surgery.

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 finding that Mr. Moats established that the right shoulder diagnostic arthroscopy with debridement and distal clavicle excision with reconstruction of the AC joint using allograft tendon is medically related and reasonably required for treatment of his compensable injury. Further, we cannot conclude that the Board was clearly wrong in finding that Dr. Bal's opinion was the most persuasive.

Accordingly, we affirm the Board's March 20, 2024, order.

Affirmed.

**ISSUED:** October 28, 2024

**CONCURRED IN BY:**

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