

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

**FILED**

**October 1, 2024**

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INTERMEDIATE COURT OF APPEALS  
OF WEST VIRGINIA

**JEREMY S. KILGORE,**  
**Claimant Below, Petitioner**

v.) **No. 24-ICA-180** (JCN: 2023010389)

**MOUNTAIN HEALTH NETWORK, INC.,**  
**Employer Below, Respondent**

**MEMORANDUM DECISION**

Petitioner Jeremy S. Kilgore appeals the March 27, 2024, order of the Workers' Compensation Board of Review ("Board"). Respondent Mountain Health Network, Inc. ("Mountain Health") timely filed a response.<sup>1</sup> Mr. Kilgore did not file a reply. The issue on appeal is whether the Board erred in affirming the claim administrator's order, which rejected Mr. Kilgore's workers' compensation claim because the disability complained of was not attributable to an injury or disease received in the course of or resulting from employment.

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.

Prior to the events leading to this appeal, on August 13, 2019, Mr. Kilgore was seen at St. Mary's Medical Center, where he complained of abdominal pain starting in the umbilical area and extending to the right flank. Mr. Kilgore underwent a CT scan of his abdomen and pelvis, which showed no acute findings. The diagnosis was abdominal pain.

Turning to the alleged injury at issue in this case, Mr. Kilgore was employed by Mountain Health as a Registered Nurse in November 2022. On November 20, 2022, he completed an Employees' and Physician's Report of Occupational Injury or Disease, which stated that on November 5, 2022, he injured his abdomen, back, groin, penis, and anus when he was transferring a patient from a chair to the bed, and the patient's legs gave out. The physician's portion of the report was signed by medical personnel at St. Mary's

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<sup>1</sup> Mr. Kilgore is represented by Edwin H. Pancake, Esq. Mountain Health is represented by Steven K. Wellman, Esq., and James W. Heslep, Esq.

Medical Center, who described the injury as appendagitis and indicated that it was the result of an occupational injury.

Mr. Kilgore was seen by Matthew J. Hofeldt, M.D., on November 17, 2022. Dr. Hofeldt indicated that when Mr. Kilgore was seen in the emergency room, his CT scan showed epiploic appendagitis, and that he had been placed on antibiotics, but was not feeling better. Dr. Hofeldt indicated that acute appendagitis was ruled out, and his assessment was abdominal pain.

Syam B. Stoll, M.D., performed a review of Mr. Kilgore's medical records on December 5, 2022. Dr. Stoll opined that the medical records did not support the causality of a work-related diagnosis of epiploic appendagitis and inguinal hernia. Dr. Stoll noted that only limited research has been done on treatment of epiploic appendagitis, but that some authors believe it to be a self-limiting condition that will resolve itself in ten days. Further, Dr. Stoll concluded that Mr. Kilgore's initial presentation of right-sided lower back pain and right flank pain followed by right lower quadrant abdominal pain was not consistent with the CT scan findings of sigmoid epiploic appendagitis, which would be in the lower left quadrant. Dr. Stoll noted that the single event referenced by Mr. Kilgore would not result in these diagnoses, and that epiploic appendagitis develops as a result of restricted blood flow to the epiploic appendages.

On December 6, 2022, the claim administrator issued an order that rejected the claim on the basis that the disability complained of was not due to an injury received in the course of and resulting from employment. Mr. Kilgore protested this order.

Mr. Kilgore followed up with Dr. Hofeldt on January 24, 2023. Dr. Hofeldt noted that Mr. Kilgore had two small bilateral hernias, which have continued to bother him since the incident. Dr. Hofeldt recommended robotic assisted bilateral inguinal hernia repair with mesh.

Mr. Kilgore's surgery was scheduled for February 10, 2023. Mr. Kilgore was seen by Dr. Hofeldt on February 21, 2023, for a post-operative visit after he underwent robotic bilateral inguinal hernia repair surgery. Dr. Hofeldt indicated that Mr. Kilgore would be able to return to work on March 27, 2023.

Mr. Kilgore gave a deposition on May 10, 2023, and testified that on November 5, 2022, while at work for Mountain Health, he was helping a nurse transfer a patient who weighed more than three hundred pounds from a chair to the bed when the patient's legs gave out and he caught the entirety of the patient's weight. He stated that right after the incident he felt some muscle straining in both sides of his groin. Mr. Kilgore testified that he later went to Urgent Care and was told it was appendicitis or a kidney stone. Mr. Kilgore stated that the pain worsened, and he went to the emergency room on November 15, 2022, and was diagnosed with epiploic appendagitis and later bilateral inguinal hernias. Mr.

Kilgore further stated that he has since returned to work, and that he did not have problems with a hernia or abdominal injuries prior to these events.

On November 6, 2023, Jennifer L. Lultschik, M.D., examined Mr. Kilgore. Dr. Lultschik diagnosed epiploic appendagitis, which she determined was causally unrelated to the lifting incident on November 5, 2022. She noted that acute epiploic appendagitis is a benign, self-limited condition caused by inflammation and ischemic necrosis of the epiploic appendages. Further, Dr. Lultschik noted that after a thorough search of the medical literature, she was unable to find a causal connection between physical activity and epiploic appendagitis. She opined that the onset of symptoms two days after the reported date of injury, and their location in the right back and flank, is inconsistent with a sudden onset of epiploic appendagitis. Dr. Lultschik also diagnosed Mr. Kilgore with bilateral indirect inguinal hernias, which she stated were likely an incidental finding, and the fact that they were both indirect hernias confirms that they were congenital in etiology.

By order dated March 27, 2024, the Board affirmed the claim administrator's order, which rejected the claim. Regarding the diagnosis of bilateral inguinal hernias, the Board cited *Stiltner v. West Virginia Office of Insurance Commissioner*, No. 101564, 2012 WL 3206501 (W. Va. June 18, 2012) (memorandum decision) and noted that although medical evidence clearly establishing causation is not always required, it is required for some injuries that would otherwise require mere speculation to establish a causal connection between the alleged injury and the employment. According to the Board, bilateral inguinal hernias require medical evidence establishing causation, and it noted that Mr. Kilgore did not submit any medical evidence stating that the hernias were caused by a lifting incident.

With respect to epiploic appendagitis, the Board found that although the medical provider who signed the Report of Occupational Injury indicated that this condition is a result of an occupational injury, no medical provider had explained a causal connection between the events of November 5, 2022, and this diagnosis. The Board also noted that Dr. Stoll concluded that the medical records do not support the causality of epiploic appendagitis and inguinal hernia, and that Dr. Lultschik concluded that it is more likely than not that the diagnosis of epiploic appendagitis is causally unrelated to the incident of November 5, 2022. Thus, the Board concluded that the preponderance of credible evidence established that the diagnoses of epiploic appendagitis and bilateral inguinal hernia are not connected to the incident of November 5, 2022. It is from this order that Mr. Kilgore now appeals.

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*, No. 23-43, 2024 WL 1715166, \_\_ W. Va. \_\_, \_\_ S.E.2d \_\_ (2024).

On appeal, Mr. Kilgore argues that the medical evidence in this case establishes that Mr. Kilgore suffered a compensable injury in the course of employment on November 5, 2022, when he caught a patient to keep him from falling to the floor. Further, Mr. Kilgore asserts that the Board gave unwarranted controlling weight to the opinions of Drs. Stoll and Lultschik, even though neither were treating physicians. We disagree.

As set forth by the Supreme Court of Appeals of West Virginia, “[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 are unable to conclude that the Board was clearly wrong in affirming the claim administrator’s order, which rejected the claim.

In order for a workers’ compensation claim to be held compensable, three elements must coexist: “(1) a personal injury, (2) received in the course of employment and (3) resulting from that employment.” Syl. Pt. 1, *Barnett v. State Workmen’s Comp. Comm’r*, 153 W. Va. 796, 172 S.E.2d 698 (1970). Further, “[i]n order to establish compensability an employee who suffers a disability in the course of his employment must show by competent evidence that there was a causal connection between such disability and his employment.” Syl. Pt. 3, *Deverick v. State Comp. Dir.*, 150 W. Va. 145, 144 S.E.2d 498 (1965).

We conclude that sufficient evidence exists to support the Board’s conclusion that the diagnoses of epiploic appendagitis and bilateral inguinal hernia are not causally connected to the work incident of November 5, 2022. The Board concluded that the opinions of Drs. Stoll and Lultschik were persuasive. As noted by the Board, Dr. Stoll

concluded that the medical records do not support the causality of a work-related diagnosis of epiploic appendagitis and inguinal hernia. Further, Dr. Lultschik concluded that it is more likely than not that the diagnosis of epiploic appendagitis is causally unrelated to the event of November 5, 2022, and that the bilateral inguinal hernias were an incidental finding. We find no clear error in this decision and will defer to the Board’s determinations of credibility. *See Martin v. Randolph Cnty. Bd. of Educ.*, 195 W. Va. 297, 306, 465 S.E.2d 399, 408 (1995) (“We cannot overlook the role that credibility places in factual determinations, a matter reserved exclusively for the trier of fact. We must defer to the ALJ’s credibility determinations and inferences from the evidence. . . .”).

Accordingly, we affirm the Board’s March 27, 2024, order.

Affirmed.

**ISSUED:** October 1, 2024

**CONCURRED IN BY:**

Judge Charles O. Lorensen  
Judge Daniel W. Greear

Chief Judge Thomas E. Scarr, not participating