

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

**BENS CREEK OPERATIONS,
Employer Below, Petitioner**

v.) No. 24-ICA-233

(JCN: 2023017002)

**GROVER POWERS,
Claimant Below, Respondent**

FILED

December 23, 2024

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

MEMORANDUM DECISION

Petitioner Bens Creek Operations (“Bens Creek”) appeals the April 22, 2024, order of the Workers’ Compensation Board of Review (“Board”). Respondent Grover Powers timely filed a response.¹ Bens Creek did not reply. The issue on appeal is whether the Board erred: (1) in reversing the claim administrator’s November 14, 2023, order and authorizing continued physical therapy, and (2) in reversing the claim administrator’s December 12, 2023, order and authorizing prescriptions of Cyclobenzaprine, Tramadol, and Ibuprofen.

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 that there is error in the Board’s decision, but no substantial question of law. This case satisfies the “limited circumstances” requirement of Rule 21 of the Rules of Appellate Procedure for reversal in a memorandum decision. For the reasons set forth below, the Board’s decision is affirmed, in part, vacated in part, and this case is remanded for further proceedings consistent with this decision.

Mr. Powers completed an Employees’ and Physicians’ Report of Occupational Injury or Disease on March 3, 2023. Mr. Powers indicated that he was employed by Bens Creek as a prep plant worker and that he injured his back on February 28, 2023, while using a sledgehammer. Medical personnel from Family HealthCare signed the physician’s portion of the form on March 3, 2023. The date of initial treatment was March 3, 2023. The body parts injured were listed as the lumbar spine and pelvis. The diagnosis was lumbar sprain, which was a direct result of occupational injury. Mr. Powers was taken off work from March 3, 2023, to March 10, 2023.

Mr. Powers completed a second Employees’ and Physicians’ Report of Occupational Injury on March 8, 2023. Mr. Powers reported that he injured his lower back

¹ Bens Creek is represented by Jeffrey B. Brannon, Esq. Mr. Powers is represented by Reginald D. Henry, Esq., and Lori J. Withrow, Esq.

on February 28, 2023, while using a sledgehammer, when he turned, and his back popped. Medical personnel from Raleigh General Hospital completed the physician's portion of this form on February 28, 2023. The date of initial treatment was February 28, 2023. The diagnosis was low back pain, which was a direct result of occupational injury.

On March 13, 2023, the claim administrator issued an order which held the claim compensable for sprain of other parts of the lumbar spine and pelvis.

November 3, 2023, Rajesh Patel M.D., an orthopedic spine surgeon, authored a letter regarding Mr. Powers' February 28, 2023, injury. Dr. Patel noted that Mr. Powers injured his lower back while at work on February 28, 2023, when he lifted a sledgehammer and heard a pop in his back. Dr. Patel opined that on physical examination Mr. Powers had pain with range of motion of his lumbar spine, and tenderness over his lower lumbar spine. Further, Dr. Patel noted that Mr. Powers had a positive Faber test bilaterally, indicating sacroiliac joint pain. Dr. Patel indicated that he reviewed a March 17, 2023, MRI of Mr. Powers' lumbar spine, which revealed an annular tear at L2-L2, and a disc protrusion with annular tear at L4-L5.

On November 7, 2023, Prasadarao Mukkamala, M.D., performed an independent medical evaluation ("IME") of Mr. Powers. Dr. Mukkamala noted that Mr. Powers complained of pain and numbness in the low back with radiation to the left lower extremity and to a minor extent radiation to the right lower extremity as well. Dr. Mukkamala's diagnosis was lumbar sprain/strain with evidence of preexisting noncompensable degenerative spondyloarthropathy. Further, Dr. Mukkamala opined that Mr. Powers had reached maximum medical improvement ("MMI") for the compensable injury, and that his current symptoms were related to the pre-existing, noncompensable condition.

Mr. Powers followed up with Dr. Patel on November 8, 2023, and he reported severe pain in his lower back and into his legs. Dr. Patel's assessment was lumbar sprain, lumbar radiculitis, epidural lipomatosis L5-S1, annular tear L4-L5, and bilateral sacroiliac joint sprain. Dr. Patel opined that a CT myelogram would be helpful, and he recommended that Mr. Powers continue with physical therapy.

By order dated November 14, 2023, the claim administrator denied Dr. Patel's request for continuation of physical therapy and a CT myelogram, on the basis that Mr. Powers had been placed at MMI by Dr. Mukkamala. Mr. Powers protested this order.

On November 16, 2023, Mr. Powers was seen by Joshua Matthew Hopkins, PA-C, and Michael Muscari, D.O. Mr. Powers reported that although Dr. Mukkamala told him that he was at MMI, he was actually getting worse. PA-C Hopkins assessed a lumbar sprain and lumbar radiculopathy. PA-C Hopkins recommended that Mr. Powers remain off work for one month. Dr. Muscari recommended refills of Cyclobenzaprine, Tramadol, and Ibuprofen.

By order dated December 12, 2023, the claim administrator denied Dr. Muscari's request for prescription refills of Cyclobenzaprine, Tramadol, and Ibuprofen, on the basis that Dr. Mukkamala placed Mr. Powers at MMI, issued a PPD rating, and indicated that no further medical treatment was needed. Mr. Powers protested this order.

By order dated April 22, 2024, the Board reversed the claim administrator's (1) November 14, 2023, order denying continuation of physical therapy and a CT myelogram, and (2) December 12, 2024, order denying prescription refills of Cyclobenzaprine, Tramadol, and Ibuprofen.² The Board also ordered the claim administrator to recognize an annular tear of L3-4 and L4-5 and lumbar disc protrusion at L4-L5 as compensable conditions. The Board concluded that based on the addition of these conditions, all treatment requested by Dr. Patel and Dr. Muscari, including continued physical therapy, and refills of Cyclobenzaprine, Tramadol, and Ibuprofen, is reasonable and necessary for the compensable injury/conditions. Bens Creek now appeals this 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.

² The Board's order addresses five claim administrator's orders. The Board reversed: (1) the claim administrator's order dated May 10, 2023, and approved medial branch blocks of the lumbar spine; (2) the claim administrator's order dated May 23, 2023, and approved a back brace; (3) the claim administrator's July 12, 2023 order and approved a CT myelogram and medial branch blocks; (4) the claim administrator's July 13, 2023, order and approved SI joint injections; (5) the claim administrator's order dated September 19, 2023, and added annular tear of L3-L4 and L4-L5 and lumbar disc protrusion at L4-L5 as compensable conditions. Bens Creek only appeals the Board's decisions regarding continued physical therapy and the refills of Cyclobenzaprine, Tramadol, and Ibuprofen.

Syl. Pt. 2, *Duff v. Kanawha Cnty. Comm’n*, 250 W. Va. 510, 905 S.E.2d 528 (2024).

On appeal, Bens Creek argues that the Board summarily disposed of each issue by finding that “all treatment requested by Dr. Patel and Dr. Muscari is reasonable and necessary treatment for the compensable injury/conditions,” and no consideration was given as to whether the treatment was medically necessary or reasonably required to treat the newly added conditions. Further, Bens Creek argues that the Board erred in authorizing a prescription refill for Tramadol, because it is a schedule IV-controlled substance, which should not be prescribed more than six months after an injury pursuant to West Virginia Code of State Rules § 85-20-53.14 (2006). We agree only to the extent that the Board should have considered that Tramadol is a schedule IV-controlled substance.

The claim administrator must provide a claimant with medically related and reasonably necessary treatment for a compensable injury. *See* W. Va. Code § 23-4-3 (2005) and W. Va. Code R. § 85-20 (2006). Here, the Board concluded that because annular tear of L3-L4 and L4-L5 and lumbar disc protrusion at L4-L5 were added as compensable conditions, the treatment requested by Dr. Patel and Dr. Muscari is reasonable and necessary for the compensable injury/conditions, including physical therapy and refills of Cyclobenzaprine, Ibuprofen, and Tramadol.

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). Upon review, we conclude that the Board was not clearly wrong in reversing the claim administrator’s order denying authorization for continued physical therapy. Further, the Board was not clearly wrong in reversing the claim administrator’s order denying authorization for prescriptions of Cyclobenzaprine and Ibuprofen.

Turning to Board’s authorization of a prescription refill for Tramadol, West Virginia Code of State Rules § 85-20-53.14, provides, in part, “[s]chedule IV sedative and anxiolytic drugs should be prescribed on an outpatient basis for no longer than six months after initial injury or following a subsequent operative procedure.” The Board’s order did not consider that Tramadol is a schedule IV-controlled substance when it authorized an additional prescription refill. Further, there is no medical evidence that justifies the prescription of this medication outside of the applicable guidelines. Thus, we vacate the Board’s order insofar as it authorizes a prescription refill for Tramadol and remand the case to the Board for further consideration as to whether this refill was appropriate in light of West Virginia Code of State Rules § 85-20-53.14.

Accordingly, we affirm in part, vacate in part, and remand the Board’s April 22, 2024, order for further proceedings consistent with this decision. Specifically, we affirm the Board’s authorization of continued physical therapy and prescription refills for

Cyclobenzaprine and Ibuprofen. We vacate and remand the portion of the Board's order pertaining to the Tramadol prescription refill for further consideration as to whether the prescription is appropriate in light of West Virginia Code of State Rules § 85-20-53.14.

Affirmed, in part, Vacated, in part, and Remanded.

ISSUED: December 23, 2024

CONCURRED IN BY:

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