

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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CHARLESTON

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CAITLIN R. WORKMAN,  
PETITIONER

SUPREME COURT NO.: unassigned

v.

ICA No: 23-ICA-14

JCN: 2022009605

DOI: 11/08/2021

ACNR RESOURCES, INC.,  
RESPONDENT.

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PETITION FOR APPEAL  
From a Decision of the  
INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA  
Issued on the  
5<sup>th</sup> day of September, 2023

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FROM THE INTERMEDIATE COURT  
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PETITION FOR APPEAL

TO: THE HONORABLE JUSTICES OF THE SUPREME COURT OF APPEALS  
OF WEST VIRGINIA:

I.

NATURE OF THE CASE AND KIND OF PROCEEDING

Your claimant and Petitioner, Caitlin R. Workman, respectfully represents that she is aggrieved by the Decision of the Intermediate Court of Appeals of West Virginia dated September 5, 2023, which affirmed the December 14, 2022 Order of the Board of Review, which affirmed five Orders of the Claims Administrator dated December 16, 2021, denying

authorization for an orthopedic consult and EMG of the right upper extremity (RUE); January 3, 2022, denying authorization for an orthopedic consult; February 14, 2022, denying authorization for nine physical therapy visits; March 24, 2022, denying authorization for an MR Arthrogram; and January 20, 2022, closing Ms. Workman's claim for temporary total disability benefits. Your claimant and Petitioner, Caitlin R. Workman, respectfully asserts that the Decision of the Intermediate Court of Appeals of West Virginia dated September 5, 2023, is clearly wrong in light of the reliable, probative and substantial evidence on the whole record.

## II.

### STATEMENT OF FACTS

Caitlin R. Workman injured her right shoulder in the course of and resulting from her employment with ACNR Resources, Inc. on November 8, 2021, when a chain under tension broke, causing the hook attached to the end of the chain to strike her right shoulder. She was taken to Wheeling Hospital by ambulance where she presented with a right shoulder injury. Impression was right shoulder contusion and right back laceration. X-rays did not demonstrate a fracture. (App. #1) An Employees' and Physicians' Report of Occupational Injury or Disease was completed diagnosing a right shoulder contusion. (App. #2) Ms. Workman was seen on November 9, 2021 by Elizabeth Snyder, PA, of Corporate Health. PA Snyder's impression was laceration and contusion of the right shoulder. She stated that if Ms. Workman continued to be symptomatic, she may need additional testing. (App. #3) Ms. Workman continued to see PA Snyder between November 10, 2021, through March 25, 2022. PA Snyder indicated through Attending Physician Reports that Ms. Workman had not reached MMI and was not ready for a permanent partial disability rating, remaining temporarily totally disabled from November 9, 2021, through April 9, 2022.

On November 15, 2021, PA Snyder noted that Ms. Workman reported increased right biceps pain with decreased right grip strength, and that Ms. Workman had developed shaking in her right hand. Impression remained the same, and PA Snyder recommended four weeks of physical therapy and held Ms. Workman off work. (App. #4) Ms. Workman began physical therapy on November 16, 2021, for the chief complaint of pain and weakness of the right upper extremity (RUE). Physical diagnosis was right shoulder pain, right shoulder mobility impairment, right shoulder muscle power impairment, and forward head posture. (App. #5) On November 19, 2021, the Claims Administrator held Ms. Workman's claim compensable for laceration without foreign body of the back wall of the thorax, and contusion of the right shoulder. (App. #6)

PA Snyder noted continued pain and weakness of Ms. Workman's RUE and tremor of the right hand on November 19, 2021. PA Snyder noted that Ms. Workman continued to have pain in her right biceps, and weakness and a tremor in her right hand and recommended an orthopedic consult due to her continued RUE weakness. (App. #7) On December 1, 2021, PA Snyder found that physical therapy was relieving some of Ms. Workman's symptoms and weakness, but noted that Ms. Workman reported weakness and trembling in her hand that would develop later in the day. (App. #8) This was corroborated by Ms. Workman's physical therapist, who noted a strength deficit compared to Ms. Workman's left upper extremity. (App. #9) PA Snyder recommended an orthopedic consult and an EMG of the RUE due to Ms. Workman's ongoing RUE weakness. (App. #8 ) Again, PA Snyder, December 1, 2021) On December 10, 2021, PA Snyder wrote that Ms. Workman was making progress regarding her RUE strength, and may be able to return to work by the time her IME was performed. (App. #10)

Dr. Prasadarao Mukkamala performed an IME at the behest of the employer on December 15, 2021. Ms. Workman presented with pain over her right shoulder and weakness in her right arm. It was noted that she was not working at that time. Dr. Mukkamala found that Ms. Workman had 80 pounds of grip strength in her left hand, but only 60 pounds in her right hand. Despite this disparity, he opined that she had reached MMI, that there was no indication for further studies or treatment, and that Ms. Workman could return to work without restrictions. Regarding his finding that Ms. Workman had reached MMI, he noted that the laceration over her scapula “might have penetrated the muscles under the skin such as the infraspinatus.” (App. #11) On December 16, 2021, the Claims Administrator denied PA Snyder’s request for an orthopedic evaluation and EMG of the RUE. (App. #12) Ms. Workman’s TTD and treatment benefits were suspended.

On December 22, 2021, PA Snyder found that Ms. Workman continued to improve and noted that she desired to do physical therapy for another week or so and see an orthopedic surgeon based upon to her concerns about returning to 10-hour days due to her ongoing pain with long periods of activity. She was scheduled to follow-up in a couple weeks, at which time it was felt she could be released to return to work. (App. #13) On January 3, 2022, the Claims Administrator issued an order denying PA Snyder’s request for authorization for an orthopedic consult and EMG. (App. #14) Ms. Workman returned to PA Snyder on January 5, 2022, at which time she noted that Ms. Workman had pain with lifting her arm overhead, and continued to have some RUE weakness in comparison to her left. PA Snyder recommended two more weeks of physical therapy to strengthen her RUE in preparation for a safe return to work. She opined that Ms. Workman would be able to return to work in two weeks. (App. #15)

PA Snyder wrote a report dated January 19, 2022 stating that Ms. Workman was to remain off work until the following Friday and was to continue physical therapy. She noted that her requests for EMG and orthopedic consult had been denied, but that Ms. Workman was pursuing an orthopedic consult on her own. She was hopeful that Ms. Workman would be able to return to work on January 31, 2022. (App. #16) On January 20, 2022, the Claims Administrator issued an Order closing Ms. Workman's claim for temporary total disability benefits. (App. #17)

Ms. Workman saw her private PCP at Boone Memorial Hospital in Madison, WV on January 27, 2022 after she was denied referrals in her work injury claim. She presented with pain in her right shoulder and right shoulder blade. She reported that she had weakness of the right arm that got progressively worse with activity. She was referred to an orthopedist. (App. #18)

January 28, 2022, PA Snyder documented her concern regarding Ms. Workman's easy fatigue, continued weakness of her RUE, and right-hand tremor when her arm is outstretched. She noted that Ms. Workman was going to see an orthopedist under her personal insurance. (App. #19) On February 11, 2022, PA Snyder found tremor and decreased grip strength of Ms. Workman's RUE compared to her left, recommending additional physical therapy to address Ms. Workman's weakness and tremor, stating, "[S]he has made progress and she initially noticed the weakness and the tremor and does continue to improve so I feel a few more weeks of therapy will be helpful for her." She was instructed to remain off work due to her "noticeable weakness [and] the definite tremor of the right hand since the injury back in November." A request was submitted for an additional three weeks (nine visits) of physical therapy. (App. #20). This request for authorization was denied three days later, on February 14, 2022. (App. #21)

Jeffrey Abbott, D.O., orthopedist in Wheeling, evaluated Ms. Workman on March 3, 2022, finding decreased range of motion with pain and positive apprehension test, assessing a

tear of the right glenoid labrum and stated “patient has been through physical therapy and continues to have significant activity limiting pain. [. . .] I feel she has a labral tear.” An MR Arthrogram was recommended. (App. #22) This request was denied on March 24, 2022. (App. #23)

An MR Arthrogram was performed on March 22, 2022, by Dr. John DeFilippo, which was reported to show “indistinctness of the middle glenohumeral ligament which should be correlated with signs of joint instability clinically.” (App. #24) On March 25, 2022, PA Snyder noted weakness on the right side and trembling with an outstretched arm. (App. #25)

Ross Tennant, NP, WVU Medicine, at Corporate Healthk, evaluated Ms. Workman on April 6, 2022 for pain over the posterior right shoulder and generalized weakness. She also had a noticeable tremor of the RUE and a weak right hand grip strength compared to the left. Diagnosis was contusion. (App. #26) Ms. Workman returned to NP Tennant on April 13, 2022. He found that she had not reached MMI, and that she would remain TTD until May 23, 2022. (App. #27)

Ms. Workman testified by deposition on May 19, 2022. She stated that a couple weeks after her compensable injury, she began to experience loss of strength in her right arm and loss of grip in her right hand. She testified that she had an EMG scheduled for August that would be paid by her personal insurance. She stated that she had been released to return to work and was scheduled to work that day. (App. #28)

The Board of Review issued an Order affirming all five of the Claims Administrator’s Orders dated December 14, 2022. The Board found that, although the evidence did indicate that Ms. Workman’s complaints included weakness of the right arm, worsened by activity, and weak grip strength with tremors of the RUE, it did not indicate that these symptoms were the result of



a laceration and contusion. Therefore, the Board held that the need for an orthopedic consult, EMG, physical therapy, and MR arthrogram were not causally related to her compensable conditions. They found that Dr. Mukkamala had opined that Ms. Workman had reached MMI and could return to work without restrictions. Despite having submitted clear evidence from multiple providers supporting continuing TTD status beyond the closure date due to her RUE complaints, the Board stated that the evidence did not indicate that her complaints were due to her current compensable conditions. (App. #29).

The Intermediate Court of Appeals affirmed the Board of Review order on September 5, 2023. Two of the IAC judges stated that they agreed with the Board's findings, opining that there was "no evidence indicating that [her ongoing, post-injury] symptoms were due to either the compensable contusion or the laceration". Therefore, the majority stated that Ms. Workman failed to demonstrate that the requested treatment, testing, and consultation were medically related or reasonably required for her compensable conditions. The majority also stated the Board was not clearly wrong to affirm the closure of her claim for TTD benefits. (App. #30).

Judge Thomas E. Scarr dissented, stating that there was no evidence to support finding that any of Ms. Workman's ongoing symptoms preexisted her compensable injury or that she had suffered a subsequent injury, and that treatment and testing were therefore warranted. He further noted that Ms. Workman went forward with getting an MR Arthrogram through her private insurance, which had clearly authorized this procedure as medically necessary and reasonable, therefore demonstrating the reasonableness and appropriateness of the requested consultations, EMG, and MR Arthrogram. He stated that physical therapy was still clearly indicated, as Ms. Workman's continued symptoms were likely the result of her workplace injury and because she had consistently seen improvement from receiving physical therapy. Judge Scarr

found Dr. Mukkamala's opinion of MMI to be inconsistent with the totality of the evidence, noting that Dr. Mukkamala had found Ms. Workman to have reached MMI despite opining that the hook "might have penetrated the muscles under the skin" and including that her injured, dominant hand exhibited twenty pounds less grip strength than her uninjured, nondominant hand. Further, Judge Scarr noted that Ms. Workman had seen other physicians after Dr. Mukkamala who had noted "observable tremors and objective weakness in her injured arm/hand", and that the MR arthrogram had revealed instability in her right shoulder. He concluded by stating that Ms. Workman continued to be entitled to TTD benefits due to her ongoing symptoms resulting from her work injury. Based upon this, he found that the Board had erred in affirming all five Claims Administrator's Orders. (*Id.*)

### III.

#### ASSIGNMENT OF ERROR RELIED UPON FOR REVERSAL

The Intermediate Court of Appeals of West Virginia was clearly wrong in its Decision of September 5, 2023, affirming the Board of Review's Order of December 14, 2022, which affirmed five Orders of the Claims Administrator dated December 16, 2021, denying authorization for an orthopedic consult and EMG of the right upper extremity (RUE); January 3, 2022, denying authorization for an orthopedic consult; February 14, 2022, denying authorization for nine additional physical therapy visits; March 24, 2022, denying authorization for an MR Arthrogram; and January 20, 2022, closing Ms. Workman's claim for temporary total disability benefits, in light of the reliable, probative and substantial evidence on the whole record.

IV.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Your claimant and Petitioner, Caitlin R. Workman, respectfully submits that the issues herein do not require or would be aided by oral argument and present no new issue of law. Therefore, it is requested that a Memorandum Decision be issued herein.

V.

POINTS OF LAW AND CITATIONS TO AUTHORITY

1) The Board of Review shall reverse, vacate or modify the order or decision of the administrative law judge if the substantial rights of the petitioner or petitioners have been prejudiced because the administrative law judge's findings are:

1. In violation of statutory provisions; or
2. In excess of the statutory authority or jurisdiction of the administrative law judge; or
3. Made upon unlawful procedures; or
4. Affected by other error of law; or
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.

West Virginia Code § 23-5-12(b)

2) 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.

West Virginia Code § 23-5-12a(b) (2022)

- 3) If, after weighing all of the evidence regarding an issue in which a claimant has an interest, there is a finding that an equal amount of evidentiary weight exists favoring conflicting matters for resolution, the resolution that is most consistent with the claimant's position will be adopted.

West Virginia Code §23-4-1g(a)

- 4) The Claims Administrator is required to provide reasonable and necessary treatment, health care, or healthcare goods and services.

West Virginia Code §23-4-3 and 85 CSR 20

- 5) A claimant's disability will be presumed to have resulted from the compensable injury if: (1) before the injury, the claimant's preexisting disease or condition was asymptomatic, and (2) following the injury, the symptoms of the disabling disease or condition appeared and continuously manifested themselves afterward. There still must be sufficient medical evidence to show a causal relationship between the compensable injury and the disability, or the nature of the accident, combined with the other facts of the case, raises a natural inference of causation.

Moore v. ICG Tygart Valley, LLC (W. Va. 2022)

- 6) Where, in the course of and arising out of his employment, an employee in good health and of strong physique, suffers physical injury which is followed by serious disability, competent physicians differing as to whether the disabilities are attributable to the injury, but only probable or conjectural reasons or causes are assigned by physicians in an effort to explain the disabilities on grounds other than the injury, the presumptions should be resolved in favor of the employee rather than against him.

Pripich v. State Comp. Comm'r., 112 W.Va. 540, 166 S.E. 4 (W.Va., 1932)

V.

ARGUMENT

Caitlin R. Workman injured her right shoulder in the course of and resulting from her work activities for ACNR Resources Inc. on November 8, 2021 when a chain she and co-workers were using to pull a “shield” snapped due to excessive tension causing the chain—and the hook attached to the end of the chain—to fly directly at Ms. Workman. The chain and hook struck her with sufficient force to pierce her work clothing and lacerate her right shoulder and back region. Dr. Mukkamala later opined in his IME of December 15, 2021 that the laceration over her scapula “might have penetrated the muscles under the skin such as the infraspinatus”. She was taken by ambulance to Wheeling Hospital Emergency Department on November 8, 2021, where x-rays were interpreted to show no fracture. PA Snyder, with Corporate Health, diagnosed laceration and contusion of the right shoulder.

The Claims Administrator was clearly wrong in denying authorization for 1) Orthopedic Consult; 2) Orthopedic Consult with EMG of Right Upper Extremity; and 3) MR Arthrogram, as these additional measures are necessary to diagnose and resolve Ms. Workman’s ongoing symptoms.

PA Snyder treated Ms. Workman regularly throughout her disability period, from November 9, 2021 through her return to work on May 18, 2022. On November 15, 2021, one week after her injury, PA Snyder noted that Ms. Workman had developed complaints of biceps pain and right-hand weakness. These symptoms, which Ms. Workman did not have prior to her work injury, continued to manifest for multiple months until the time PA Snyder released Ms. Workman to return to work on May 18, 2022. PA Snyder prescribed physical therapy, which Ms. Workman began on November 16, 2021. Ms. Workman returned to PA Snyder on November 19, 2021 at which time PA Snyder noted continued pain, RUE weakness, and tremor of the right hand. She recommended an orthopedic consult due to the continued RUE weakness. This

orthopedic consult was wrongly denied by Order of the Claims Administrator dated January 3, 2022, despite her compensable work injury being the clear cause of these manifested symptoms. PA Snyder evaluated Ms. Workman again on December 1, 2021, noting that physical therapy was improving some of Ms. Workman's symptoms and weakness, but recommended an orthopedic consult and an EMG of her right upper extremity to assess Ms. Workman's ongoing weakness in this location. This request for an orthopedic consult and EMG was wrongly denied by the Claims Administrator on December 16, 2021, based upon the opinion of MMI reported by Dr. Mukkamala's IME of December 15, 2021.

Dr. Mukkamala performed an IME on December 15, 2021 in which he wrongly found Ms. Workman to have reached MMI despite including that she had a grip strength deficit in her right hand and continued complaints of pain and weakness in her right upper extremity. He noted that Ms. Workman was right-hand dominant, and that PA Snyder had requested additional diagnostic studies, while continuing to hold Ms. Workman off work. He noted her ongoing symptoms and stated that the laceration she sustained in her compensable injury "might have penetrated the muscles under the skin such as the infraspinatus" but disregarded her ongoing symptoms yet did not provide an alternative diagnosis for what would be causing them, concluding that she had reached MMI and needed no further diagnostic studies or treatment.

Where, in the course of and arising out of his employment, an employee in good health and of strong physique, suffers physical injury which is followed by serious disability, competent physicians differing as to whether the disabilities are attributable to the injury, but only probable or conjectural reasons or causes are assigned by physicians in an effort to explain the disabilities on grounds other than the injury, the presumptions should be resolved in favor of the employee rather than against him.

Pripich v. State Comp. Comm'r., 112 W.Va. 540, 166 S.E. 4 (W.Va., 1932). Here, PA Snyder has treated Ms. Workman for multiple months for symptoms she did not have prior to her work

injury, and Ms. Workman has seen improvement through PA Snyder's recommended treatment. Conversely, Dr. Mukkamala has found her to have reached MMI despite noting her ongoing symptoms and limitations, and has recommended against PA Snyder's requested orthopedic evaluation and EMG to assess these ongoing symptoms, finding that she does not need any additional treatment or testing. Further, he has not offered any alternative diagnosis that would explain her symptoms on grounds other than her compensable injury. He did acknowledge that her compensable injury could have caused damage to her infraspinatus, a muscle known to contribute to the stability of the glenohumeral joint. Because these symptoms did not exist prior to her compensable injury, and Ms. Workman has improved, yet has also remained symptomatic, an orthopedic consultation and EMG are entirely appropriate her course of treatment.

Ms. Workman proceeded with obtaining an orthopedic consult with Dr. Jeffrey Abbott, Orthopedic Surgeon with Wheeling Hospital, on March 3, 2022, under her personal insurance. Physical examination found decreased range of motion with pain and a positive apprehension test. He stated that she had received physical therapy yet continued to have significant activity-limiting pain, and therefore assessed right glenoid labrum tear. Dr. Abbott recommended an MR Arthrogram to assess and diagnose the structures of Ms. Workman's injured right shoulder. When this was denied, she returned to Dr. Abbott on March 22, 2022, at which time Dr. DeFilippo, Radiologist with Wheeling Hospital, performed an MR Arthrogram which revealed instability in Ms. Workman's right shoulder. Dr. Defilippo interpreted the Arthrogram to show "indistinctness of the middle glenohumeral ligament which should be correlated with signs of joint instability clinically." Dr. Abbott did find clinical signs of instability in Ms. Workman's right shoulder. These combined finding demonstrate that the Claims Administrator's March 24,

2022 denial of Dr. Abbott's request for authorization to perform an MR Arthrogram was clearly wrong.

This wrong denial was based upon Dr. Mukkamala's finding of MMI with no further need for treatment, which was also clearly wrong as the MR Arthrogram was necessary to visualize the instability in Ms. Workman's shoulder, as it helps explain her ongoing pain, weakness, and tremor. "The Claims Administrator is required to provide reasonable and necessary treatment, health care, or healthcare goods and services." West Virginia Code §23-4-3 and 85 CSR 20. Here, Dr. Abbott's request is a reasonable and necessary procedure in order to determine the cause of Ms. Workman's ongoing symptoms and limitations despite her participation in physical therapy. There is no evidence that Ms. Workman had any preexisting issue with her middle glenohumeral ligament before her work injury, and she has testified that she had no limitations or restrictions with her right shoulder prior to her November 8, 2021 work injury. Therefore, this new condition of weakness and instability should be considered part of her compensable injury of November 8, 2021, and Dr. Abbott's recommendation for the MR Arthrogram should be found to have been clearly warranted, and retroactively authorized.

Judge Thomas Scarr correctly dissented from the Intermediate Court majority's opinion affirming the Board's Order of December 14, 2022. He specifically noted that there is no evidence that a pre-existing condition or subsequent injury caused her continued symptoms. He noted that she developed pain, weakness, and tremors in her right arm/hand only after her injury occurred, and the record demonstrates that these symptoms were not present prior to her work injury. He noted that her symptoms developed immediately after her injury, and continued even after Dr. Mukkamala found her to have reached MMI. Judge Scarr noted that Ms. Workman's private insurance covered an MR arthrogram, demonstrating that this diagnostic procedure was



medically necessary and reasonable, and correctly opined that the requested Orthopedic Consult, EMG, and MR Arthrogram were crucial to determining the cause of these ongoing symptoms.

The Claims Administrator's Denial of Nine (9) Additional Physical Therapy Visits was clearly wrong, as Ms. Workman's symptoms manifested as a result of her compensable injury, and she experienced consistent improvement through physical therapy.

On February 11, 2022, PA Snyder wrote that physical examination continued to reveal tremor and decreased grip strength in Ms. Workman's RUE compared to her left. She recommended additional physical therapy to address Ms. Workman's weakness and tremor, stating, "[S]he has made progress and she initially noticed the weakness and the tremor, and does continue to improve so I feel a few more weeks of therapy will be helpful for her." This treatment was clearly providing results and therefore its continuation was a medically reasonable recommendation. Ms. Workman was instructed to remain off work due to her "noticeable weakness [and] the definite tremor of the right hand since the injury back in November." Based upon these specific findings, PA Snyder requested authorization for nine (9) additional physical therapy sessions. However, on February 14, 2022, the Claims Administrator wrongly denied this request based upon Dr. Mukkamala's December 15, 2021 IME finding her to have reached MMI, requiring no additional treatment. This is clearly wrong, as these symptoms did not predate her injury, developed immediately following the injury, and continuously manifested.

A claimant's disability will be presumed to have resulted from the compensable injury if: (1) before the injury, the claimant's preexisting disease or condition was asymptomatic, and (2) following the injury, the symptoms of the disabling disease or condition appeared and continuously manifested themselves afterward. There still must be sufficient medical evidence to show a causal relationship between the compensable injury and the disability, or the nature of the accident, combined with the other facts of the case, raises a natural inference of causation.

Moore v. ICG Tygart Valley, LLC (W. Va. 2022). Here, it must be presumed that Ms.

Workman's ongoing symptoms are the result of her occupational injury, as they did not preexist

her compensable injury, but continually manifested thereafter. This conclusion is supported by multiple medical professionals documenting Ms. Workman's weakness and tremors, and the fact that her tremor has manifested in the RUE, the site of her work injury. Therefore, this requested treatment is medically reasonable and necessary to her recovery. Further, PA Snyder has a factually supported basis to believe this additional treatment will help resolve Ms. Workman's ongoing symptoms, as she has documented continuous improvement through physical therapy.

In Judge Scarr's dissent, he concluded that the additional physical therapy should have been authorized for the treatment of her continued symptoms. He correctly stated that the evidence demonstrates that her continued symptoms were likely related to her workplace injury, and therefore treatment of her symptoms through physical therapy—which had provided a demonstrated benefit—was appropriate. He again noted that there was no evidence that her symptoms were the result of anything other than her compensable workplace injury, and that there *is* evidence that the previous physical therapy she had received had helped ease her symptoms. Judge Scarr stated that Dr. Mukkamala's opinion that Ms. Workman had reached MMI was inconsistent with the evidence of record, because he had also stated that her injury "might have penetrated the muscles under the skin" and had noted that the strength in her injured, dominant hand was twenty pounds less than in her uninjured, non-dominant hand. He further found Dr. Mukkamala's opinion to be inconsistent with the opinions of all other medical professionals involved in Ms. Workman's care and treatment, as they had noted observable tremors and objective weakness in her injured arm/hand, and the MR arthrogram had shown instability in her right shoulder. Based upon this, he found that Dr. Mukkamala's finding of MMI "varied considerably from the record demonstrating that she continued to have the same symptoms that only developed after the workplace injury occurred" concluding that it made it

more likely than not that her symptoms were the result of her workplace injury and therefore additional physical therapy should have been authorized.

The Claims Administrator's closure of Temporary Total Disability Benefits was premature, as Ms. Workman had not reached MMI, was still under active care and treatment, and had not been released to return to work by her treating physicians until May 18, 2022.

The Claims Administrator wrongly closed Ms. Workman's claim for temporary total disability benefits by order of January 20, 2022, based upon Dr. Mukkamala's IME Report finding her to have reached MMI. This was clearly wrong, as all treating physicians continued to find Ms. Workman temporarily totally disabled until her release to return to work on May 18, 2022, just prior to her deposition. Ms. Workman consistently treated with PA Snyder, who repeatedly noted Ms. Workman's right hand grip weakness, right hand tremor, and right upper extremity weakness, recommending additional testing, consultations, and physical therapy. Dr. Abbott noted range of motion deficits, pain, and a positive Apprehension Test, recommending an MR Arthrogram and EMG test. Dr. Mukkamala is the only medical provider to find Ms. Workman capable of returning to full-duty work prior to May 18, 2022. "If, after weighing all of the evidence regarding an issue in which a claimant has an interest, there is a finding that an equal amount of evidentiary weight exists favoring conflicting matters for resolution, the resolution that is most consistent with the claimant's position will be adopted." West Virginia Code §23-4-1g(a). Here, the evidence clearly favors finding that Ms. Workman remained temporarily totally disabled between November 8, 2021, and May 18, 2022, when she was released to return to work full duty.

The Board of Review shall reverse, vacate or modify the order or decision of the administrative law judge if the substantial rights of the petitioner or petitioners have been prejudiced because the administrative law judge's findings are:

1. In violation of statutory provisions; or
2. In excess of the statutory authority or

- jurisdiction of the administrative law judge; or
- 3. Made upon unlawful procedures; or
- 4. Affected by other error of law; or
- 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.

West Virginia Code § 23-5-12(b). Here, the Board of Review has failed to reverse five (5) clearly wrong Orders of the Claims Administrator. The Board wrongly found that, despite Ms. Workman's right upper extremity having been the injury site in her compensable claim; and the fact that she had no history of pain, weakness, or limitations in her right upper extremity prior to her work injury; and the fact that all of her treating physicians recommended additional testing and treatment for her ongoing pain, tremors, and weakness, that Ms. Workman's consistent symptoms were "not the result of a laceration and contusion" that occurred to the very same location. Therefore, the Board wrongly affirmed the denial of authorization for an Orthopedic consult and EMG of RUE; of authorization for an orthopedic consult; of authorization for additional physical therapy; and of authorization for an MR Arthrogram.

The Board further wrongly affirmed the closure of Ms. Workman's claim for TTD benefits based upon Dr. Mukkamala's finding of MMI, despite all of the aforementioned evidence and support to the contrary. "If, after weighing all of the evidence regarding an issue in which a claimant has an interest, there is a finding that an equal amount of evidentiary weight exists favoring conflicting matters for resolution, the resolution that is most consistent with the claimant's position will be adopted." West Virginia Code §23-4-1g(a) Here, Ms. Workman's right upper extremity was injured in her compensable November 8, 2021 work injury, and within one week she developed all of the symptoms and complaints that continued to limit her until she received the appropriate treatment (under her private insurance) to permit her to return to work.

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.

West Virginia Code § 23-5-12a(b) (2022) Here, the Intermediate Court of Appeals failed to correct the clearly wrong Board of Review Order of December 14, 2022, affirming all five (5) Claim Administrator's Orders, denying Ms. Workman medically reasonable and necessary treatment, consultations, and benefits, to which she was entitled.

Judge Scarr's dissent from the Intermediate Court of Appeals majority decision of September 5, 2023 found that the Claims Administrator had prematurely closed Ms. Workman's TTD benefits, because her symptoms and limitations persisted for months after Dr. Mukkamala's MMI opinion. Further, all of Ms. Workman's other treating physicians continued to hold her off work for several months after Dr. Mukkamala's IME. Lastly, Judge Scarr noted that if the Board had authorized the requested Orthopedic Consultations, EMG, MR Arthrogram, and additional physical therapy appointments, then her TTD benefits would have remained open while she was under this active treatment and continuing diagnosis period. Because the evidence clearly favors finding that Ms. Workman's ongoing symptoms and limitations were the result of her November 8, 2021 work injury to her right upper extremity, this Honorable Court is requested to reverse the clearly wrong Decision of the Intermediate Court of Appeals dated September 5, 2023, and authorize the requested orthopedic consult and EMG of RUE; Orthopedic Consult; nine


additional Physical Therapy visits; MR Arthrogram; and grant Ms. Workman her Temporary Total Disability Benefits for the closed period of January 20, 2022 through May 18, 2022, the date of her return to work.

VI.

PRAYER

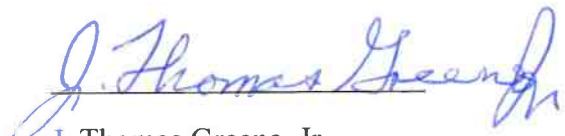
WHEREFORE, your claimant and Petitioner, Caitlin R. Workman, respectfully prays that this Honorable Court will reverse the Decision of the Intermediate Court of Appeals of West Virginia dated September 5, 2023 and authorize the requested orthopedic consult and EMG of RUE; Orthopedic Consult; nine additional Physical Therapy visits; MR Arthrogram; and grant Ms. Workman Temporary Total Disability Benefits for the closed period of January 20, 2022 through May 18, 2022, the date she returned to work; and for such other and further relief as is supported by competent medical evidence.

Respectfully submitted,  
Caitlin R. Workman  
By Counsel

  
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Caitlin R. Workman

CERTIFICATE OF SERVICE

I, J. Thomas Greene, Jr., counsel for the Petitioner, Caitlin R. Workman, do hereby certify that on this the 3rd day of November, 2023 a copy of the foregoing Petition for Appeal and Appendix of Relevant Documents was served upon Aimee M. Stern, Esq., Counsel for the Employer and Respondent, ACNR Resources, Inc. by service via File&ServeXpress

  
J. Thomas Greene, Jr.