

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Charleston

SCA EFiled: Dec 01 2023
10:59AM EST
Transaction ID 71521020

CAITLIN R. WORKMAN,

Claimant/Petitioner,

v.

MARSHALL COUNTY COAL RESOURCES, INC.,

Employer/Respondent.

SUPREME COURT NO.: 23-638
APPELLATE COURT NO.: 23-ICA-14
JCN: 2022009605

FROM THE INTERMEDIATE COURT OF APPEALS

EMPLOYER'S RESPONSE TO CLAIMANT'S PETITION FOR APPEAL

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I. KIND OF PROCEEDING AND NATURE OF RULING

This claim comes before this Honorable Court pursuant to the Claimant's Petition for Appeal from the September 5, 2023 Order of the Intermediate Court of Appeals (Petitioner's App. #30 & 31), affirming the December 14, 2022 Order of the Worker's Compensation Board of Review (Petitioner's App. #29), which affirmed the following five orders of the Claims Administrator: (1) December 16, 2021 order denying authorization for an orthopedic consult and EMG (Petitioner's App. #12); (2) January 3, 2022 order denying authorization for an orthopedic consult (Petitioner's App. #14); (3) January 20, 2022 order closing this claim for temporary total disability benefits (Petitioner's App. #17); (4) February 14, 2022 order denying authorization for physical therapy (Petitioner's App. #21); and (5) March 24, 2022 order denying authorization for an MR arthrogram (Petitioner's App. #23).

II. STATEMENT OF FACTS

The Claimant/Petitioner, Caitlin Workman, is employed by Marshall County Coal Resources, Inc. She presented to the Wheeling Hospital Emergency Department on November 8, 2021, complaining of a right shoulder injury that occurred while she was pulling a chain which broke and snapped back, hitting her in the right shoulder. On exam, ER personnel found full range of motion of her right shoulder, no spinal tenderness, full range of motion of all extremities, and a 1 cm laceration to the right shoulder. A right shoulder x-ray performed in the ER was negative, and a chest x-ray documented a questionable slight focal pneumonitis in the right lower lung field. ER personnel repaired Ms. Workman's laceration with a suture and diagnosed her with right shoulder contusion and right back laceration (Petitioner's App. #1).

The Report of Injury was filed in this claim on November 8, 2021. Ms. Workman described the mechanism of injury as "F-Bar chain broke pulling shield in, hook flew and hit me in the shoulder." Wheeling Hospital ER personnel completed the healthcare provider's portion of the Report, identifying the compensable diagnosis as right shoulder contusion. They indicated that Ms. Workman was capable of full duty work (Petitioners App. #2).

Ms. Workman followed up at Corporate Health on November 9, 2021, where she saw Elizabeth Snyder, PA. She complained of pain and soreness in the back of her shoulder radiating into the biceps, as well as tenderness going to her back. On exam, P.A. Snyder found an inch long laceration on the upper back shoulder, which had been repaired. She noted good cervical range of motion without complaints of pain, other than a little tightness in the trapezius. She also found some tenderness to palpation in the right trapezius. Ms. Workman's shoulder range of motion was good, but she complained of some increased pain with movement against resistance. P.A. Snyder's diagnosis was laceration and contusion to the right shoulder. She removed Ms. Workman from

work and instructed her follow up in six days, at which time P.A. Snyder noted she anticipated being able to release Ms. Workman to return to work without restrictions (Petitioner's App. #3).

Ms. Workman began undergoing physical therapy at Wheeling Hospital on November 16, 2021 (Petitioner's App. #5).

A cervical spine x-ray performed at Wheeling Hospital on November 19, 2021 was negative (Respondent's App. A).

By order dated November 19, 2021, the Claims Administrator held this claim compensable for a laceration without foreign body of the right back and contusion of the right shoulder (Petitioner's App. #6).

On December 1, 2021, Ms. Workman returned to Corporate Health. She reported some relief of her symptoms and some improvement in her strength with physical therapy. On exam, P.A. Snyder found good cervical range of motion with no complaints of pain, no noticeable weakness in grip strength, a little weakness with lifting against resistance, good range of motion of the shoulders with some complaints of pain into the biceps, no shaking or trembling, and no evidence of fracture on cervical film. P.A. Snyder ordered an orthopedic consult and a right upper extremity EMG (Petitioner's App. #8).

Ms. Workman followed up at Corporate Health on December 10, 2021. She reported that she was developing a little more stamina and was not fatiguing as easily. She complained of a little more pain in the periscapular area. On exam, P.A. Snyder found tenderness to palpation just medial to the scapular area, good cervical range of motion with complaints of a little pulling in the trapezius with flexion and twisting, no obvious weakness, grip strength a little decreased on the right but much improved, increased upper extremity strength in all planes, pain with movement against resistance, and improving strength. P.A. Snyder noted that Ms. Workman had made "great

progress” through physical therapy. She indicated that an IME had been scheduled for December 15, and that Ms. Workman may be ready to return to work after the IME if she continues to progress (Petitioner’s App. #10).

Dr. Prasadarao Mukkamala examined Ms. Workman on December 15, 2021. She complained of pain over her right shoulder, mostly in the scapular area, and weakness in the right arm. On exam, Dr. Mukkamala found normal range of motion of all joints of the upper extremities. Right shoulder flexion was to 180°, extension to 50°, abduction to 180°, adduction to 40°, external rotation to 80°, and internal rotation to 80°. Right elbow flexion was to 140°, extension was full up to neutral, pronation to 80°, and supination to 80°. The motor examination was normal, although Ms. Workman complained of weakness in her right upper extremity. Sensory exam was normal, DTR’s were normal, and grip strength was 60 lbs. on the right and 80 lbs. on the left. Dr. Mukkamala’s diagnosis was small laceration over the right scapular area. He concluded that Ms. Workman’s compensable injury had reached maximum medical improvement and he found no indication for additional diagnostic studies or treatment, or for an orthopedic consult or EMG. Dr. Mukkamala concluded that Ms. Workman suffered no permanent impairment as a result of her compensable injury and that she was able to return to work with no restrictions (Petitioner’s App. #11).

On December 16, 2021, the Claims Administrator suspended Ms. Workman’s TTD benefits based upon Dr. Mukkamala’s report (Respondent’s App. B). The Claims Administrator issued a second order on December 16, denying authorization for an orthopedic consult and upper extremity EMG based upon Dr. Mukkamala’s report (Petitioner’s App. #12).

Ms. Workman followed up at Corporate Health on December 22, 2021. P.A. Snyder indicated that she was improving. She noted that Ms. Workman was concerned about returning to

work for 10-hour days due to her continued pain. Ms. Workman stated that she notices pain in her biceps with long periods of activity, and that she does not have a lot of arm pain unless she is doing more with her arm. P.A. Snyder noted that her grip strength had improved, and there was no longer shaking in the right upper extremity. On exam, P.A. Snyder found good cervical range of motion without difficulties, but complaints of a little tightness in the right trapezius with cervical flexion and extension; good shoulder range of motion with just a little discomfort with rotation; tenderness to palpation over the areas of the laceration and right trapezius; no increased weakness with movement against resistance; a little increased discomfort on the right with movement against resistance; and no tremor with outstretched hand as previously. P.A. Snyder stated that Ms. Workman would like to continue physical therapy for another week and wants to see an orthopedic surgeon. Ms. Workman stated that she does not want to go back to work yet, as she is afraid of going back and having pain that she cannot tolerate and increasing weakness. P.A. Snyder instructed Ms. Workman to follow up in two weeks, at which time she indicated she should be able to release her without restrictions (Petitioner's App. #13).

By order dated January 3, 2022, the Claims Administrator denied authorization for an orthopedic consult based upon Dr. Mukkamala's report (Petitioner's App. #14), and by order dated January 20, 2022, the Claims Administrator closed this claim for temporary total disability benefits (Petitioner's App. 17).

On February 11, 2022, P.A. Snyder requested authorization for additional physical therapy (Petitioner's App. #20), and by order dated February 14, 2022, the Claims Administrator denied authorization for the additional therapy, based upon Dr. Mukkamala's report (Petitioner's App. #21).

Ms. Workman saw an orthopedic surgeon, Dr. Jeffrey Abbott, using her private insurance, on March 3, 2022. She complained of right shoulder pain which “comes and goes,” as well as some tenderness, radiation, and weakness. On exam, Dr. Abbott found decreased range of motion with pain at the end ranges of forward flexion and external rotation. Apprehension test was positive. He reviewed Ms. Workman’s x-rays, which he noted were negative. He stated “will get MR arthrogram as I feel she has a labral tear” (Petitioner’s App. #22).

The MR arthrogram was performed on March 22, 2022, under Ms. Workman’s private insurance. The only abnormal finding was “indistinctness of the middle glenohumeral ligament predisposes to the anterior instability” (Petitioner’s App. #24).

On March 23, 2022, Dr. Abbott requested authorization for the MR arthrogram in this claim (Respondent’s App. C). By order dated March 24, 2022, the Claims Administrator denied authorization for the MR arthrogram, based upon Dr. Mukkamala’s report (Petitioner’s App. #23).

The Workers’ Compensation Board of Review affirmed all five of the Claims Administrator’s orders on December 14, 2022. The Board concluded that Ms. Workman’s current complaints - right arm weakness, weak grip strength, and right upper extremity tremors - toward which the requested treatment and additional TTD benefits would be directed, are not related to the conditions compensable in this claim, right back laceration and right shoulder contusion.

On September 5, 2023, the Intermediate Court of Appeals affirmed the Board of Review’s Order. The Court agreed with the Board’s conclusion that there was no evidence indicating Ms. Workman’s current symptoms were caused by her compensable contusion or laceration; and therefore, they found that the Board was not clearly wrong in affirming the Claims Administrator’s orders.

III. ASSIGNMENT OF ERROR

The Intermediate Court of Appeals committed no error in reaching its conclusions.

IV. SUMMARY OF ARGUMENT

The Intermediate Court of Appeals correctly determined that the treatment and additional temporary total disability benefits at issue would not be directed toward the contusion and laceration compensable in this claim.

V. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Respondent does not request oral argument and does not believe that oral argument would assist this Court in the adjudication of this matter. The issues on appeal may be fully addressed by reviewing the facts and legal arguments presented in the briefs and the record on appeal, including the Appendix. There are no principles of law to be established or modified that would require oral presentation to the Court.

VI. ARGUMENT

A. Standard of Review

1. The Intermediate Court of Appeals shall reverse, vacate, or modify a decision of the Workers' Compensation Board of Review only 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; or
- (2) In excess of the statutory authority or jurisdiction of the Administrative Law Judge;
or
- (3) Made upon unlawful procedure; 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.

W. Va. Code §23-5-12(a)(b).

2. The resolution of any issue shall be based on a weighing of all evidence pertaining to the issue, and a finding that a preponderance of the evidence supports the chosen manner of resolution.

W. Va. Code §23-4-1(g).

3. A claimant bears the burden of establishing his or her claim. *Bilchak v. State Worker's Compensation Commissioner*, 153 W. Va. 288, 168 S.E.2d 723 (1969).

4. The . . . self-insured employer . . . shall disburse and pay for personal injuries to the employees who are entitled to benefits under this chapter as follows: (1) sums for health care services, rehabilitation services, durable medical and other goods and other supplies and medically related items as may be reasonably required. W. Va. Code §23-4-3(a)(1).

5. The . . . self-insured employer . . . will pay for health care services, durable medical and other goods and other supplies and medically related items as may be reasonably required. The . . . self-insured employer will only pay for those services or items that have a direct relationship to the work related injury or disease . . . 85 C.S.R. §20-9.1

6. The self-insured employer shall issue a notice suspending the payment of temporary total disability benefits but providing a reasonable period of time during which the claimant may submit evidence justifying the continued payment of temporary total disability benefits when: (1) the physician or physicians selected by the commission conclude that the claimant has reached his or her maximum degree of improvement . . . In all cases, a finding by the self-insured employer that

the claimant has reached his or her maximum degree of improvement terminates the claimant's entitlement to temporary total disability benefits regardless of whether the claimant has been released to return to work. W. Va. Code §23-4-7(a)(e).

B. Points of Argument

The Intermediate Court of Appeals committed no error in finding the Board of Review was not clearly wrong in concluding that a preponderance of the evidence demonstrates Ms. Workman's compensable injury has reached maximum medical improvement and the requested treatment is not medically related to or reasonably required by her compensable injury.

As the Intermediate Court and Board of Review correctly noted, the only conditions compensable in this claim are a laceration of the right back and a contusion of the right shoulder. No healthcare provider has requested the addition of other diagnoses as secondary conditions in this claim. The compensable laceration was repaired with a suture in the ER on the date of injury. Both the laceration and the contusion are self-limiting conditions, which are expected to resolve in a short period of time. At the time of Dr. Mukkamala's examination, Ms. Workman had received five weeks of treatment for her compensable laceration and contusion, including three weeks of physical therapy. Dr. Mukkamala's conclusion that Ms. Workman's compensable injury had reached MMI and required no additional treatment is supported by P.A. Snyder's treatment note from just five days prior to his exam, wherein she noted that Ms. Workman had made "great progress" through physical therapy, and stated that Ms. Workman may be able to return to work following the IME. At Ms. Workman's next appointment with P.A. Snyder following Dr. Mukkamala's exam, her progress note indicates that it was Ms. Workman, not P.A. Snyder, who believed additional treatment and time off work to be indicated: "she (Ms. Workman) would like to continue physical therapy for another week and wants to see an orthopedic surgeon. She (Ms.

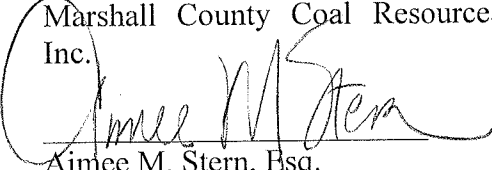
Workman) stated that she does not want to go back to work yet as she is afraid of going back and having pain that she cannot tolerate and increasing weakness.” Once again, P.A. Snyder indicated that she should be able to release Ms. Workman to return to work without restrictions at her next visit. Finally, the MR arthrogram shows Dr. Abbott’s concern for a labral tear to be incorrect, as it documented no tear; with the only abnormal finding being “indistinctness of the middle glenohumeral ligament predisposes to the anterior instability.” Significantly, neither Dr. Abbott, nor any other healthcare provider, found the MR arthrogram results to warrant a request for secondary conditions to be added to this claim.

In light of the foregoing, the Intermediate Court of Appeals committed no error in finding the Board of Review was not clearly wrong in concluding that Ms. Workman’s compensable laceration and contusion reached maximum medical improvement, and that the requested treatment would not be directed toward those compensable conditions.

VII. CONCLUSION

For the reasons set forth above, the Respondent respectfully requests that this Honorable Court affirm the Intermediate Court of Appeals’ September 5, 2023 Order.

Respectfully submitted,
Marshall County Coal Resources,
Inc.

A handwritten signature in black ink, appearing to read "Aimee M. Stern", is written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that I have, this 1st day of December, 2023, served a copy of the within and foregoing *Employer's Response to Claimant's Petition for Appeal* upon all parties to this matter via Electronic Mail and/or File & ServeXpress to the following:

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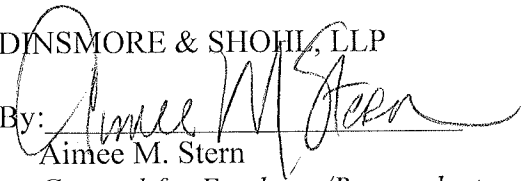
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