

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

BLACKHAWK MINING, LLC,
Employer Below, Petitioner

v.) No. 24-ICA-311 (JCN: 2021020512)

HARRIS ARGABRIGHT,
Claimant Below, Respondent

FILED
February 28, 2025

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

MEMORANDUM DECISION

Petitioner Blackhawk Mining, LLC (“Blackhawk”) appeals the July 8, 2024, order of the Workers’ Compensation Board of Review (“Board”). Respondent Harris Argabright timely filed a response.¹ Blackhawk did not reply. The issue on appeal is whether the Board erred in reversing the claim administrator’s order and authorizing bilateral medial branch nerve blocks at L3-4, L4-5, and L5-S2.

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.

Mr. Argabright completed an Employees’ and Physicians’ Report of Occupational Injury or Disease on February 26, 2021, which stated that he sustained injuries to his lower back and pelvic area while at work on February 25, 2021, when he was tightening a strap and felt a pulling sensation. The physician’s portion was completed by personnel at Family HealthCare Associates on February 26, 2021, and the diagnosis was listed as lumbar sprain.

Mr. Argabright also underwent a lumbar spine x-ray on February 26, 2021, which revealed no acute lumbar spine abnormality, mild grade 1 retrolisthesis of L3 on L4 with mild L3-L4 disc space narrowing that was about the same as prior x-rays taken June 4, 2013; mild L5-S1 disc space narrowing; and bilateral facet arthropathy that was about the same as the prior x-rays taken June 4, 2013.

¹ Blackhawk is represented by Jeffrey B. Brannon, Esq., and Jane Ann Pancake, Esq. Mr. Argabright is represented by Reginald D. Henry, Esq., and Lori J. Withrow, Esq.

By order dated March 8, 2021, the claim administrator authorized a lumbar MRI without contrast. On March 9, 2021, Mr. Argabright underwent a lumbar MRI, revealing disc space narrowing at T11-T12, degenerative disc desiccation, minimal to mild disc bulges from L2-L3 to L5-S1 with no focal disc protrusion, hypertrophy of the posterior elements at several levels, relatively mild acquired narrowing of the canal to borderline central spinal stenosis at L5/L5, relatively mild acquired narrowing of the canal at L5/S1 without central spinal stenosis, and narrowing of the neural foramina at L4-L5 and L5/S1. On April 5, 2021, the claim administrator issued an order holding the claim compensable for lumbar sprain/strain.

On May 11, 2021, Prasadarao Mukkamala, M.D., performed an independent medical evaluation (“IME”) of Mr. Argabright, who reported low back pain with radiation to the left lower extremity. Dr. Mukkamala diagnosed a lumbar sprain superimposed upon preexisting, noncompensable degenerative spondyloarthropathy. Dr. Mukkamala opined that Mr. Argabright had reached maximum medical improvement (“MMI”) for the compensable injury. Further, Dr. Mukkamala opined that the lumbar sprain did not preclude Mr. Argabright from returning to work at full duty with no restrictions; that he did not require any further medical treatment; and that there was no indication for a referral to Rajesh Patel, M.D. Dr. Mukkamala also indicated that there was no objective medical evidence of radiculopathy or spinal instability, and, as such, opined that Mr. Argabright did not require any surgical treatment. Based on this report, the claim administrator issued an order dated May 17, 2021, that denied a request for a referral to Dr. Patel. Mr. Argabright protested this order.

On January 15, 2022, Michael Brooks, M.D., issued an Age of Injury Analysis upon review of the March 9, 2021, MRI. Dr. Brooks opined that the findings on the MRI were chronic and related to degenerative disc disease and facet joint arthritis.

A lumbar spine MRI dated May 31, 2022, had the impression of mild canal stenosis at L4-5 and central disc protrusion at L5-S1.

On October 31, 2022, Mr. Argabright was treated by Dr. Patel, an orthopedic surgeon, for his lower back. Dr. Patel assessed thoracic sprain, lumbar sprain, lumbar disc protrusion L5-S1, lateral recess narrowing L4-L5, lateral recess narrowing L5-S1, neural foraminal narrowing bilateral L5-S1, lumbar facet sprain, lumbar radiculitis, and claudication. Dr. Patel stated that after epidural injections, Mr. Argabright had marked improvement in his symptoms. Dr. Patel indicated that it would be reasonable to try epidural injections again, as he had better relief with the injections than the medial branch blocks. Dr. Patel noted that if Mr. Argabright did not do well with the epidural injections, he would consider doing a lumbar decompression versus decompression and fusion.

In a progress note dated December 7, 2022, Dr. Patel indicated that he had discussed the short-term relief resulting from two epidural injections with Mr. Argabright. Dr. Patel

noted that Mr. Argabright was having pain in his back consistent with facet mediated pain, and that it might be reasonable to try medial branch blocks. Dr. Patel indicated that the medial branch blocks might give Mr. Argabright incremental relief and stated that his preference was to avoid surgery as long as possible. Dr. Patel stated that Mr. Argabright was scheduled to get an EMG, and that if it showed active radiculopathy, he may consider decompression surgery. On February 3, 2023, the claim administrator denied Dr. Patel's request for bilateral medial branch nerve blocks at L3-L4, L4-L5, and L5-S1.

On February 27, 2023, Mr. Argabright followed up with Dr. Patel regarding his lower back and left leg. Mr. Argabright reported that he was having severe pain. Dr. Patel assessed lumbar disc protrusion L5-S1, lateral recess narrowing L4-L5 bilateral, lateral recess narrowing L5-S1 bilaterally, neural foraminal narrowing bilateral L5-S1, lumbar facet sprain, lumbar sprain, and left L5-S1 radiculopathy. Dr. Patel noted that Mr. Argabright had some objective findings of radiculopathy on his EMG study and opined that radiculopathy should be added as a compensable condition in the claim. Further, he noted that his request for medial branch blocks had been denied and was on appeal, and that it would be reasonable to try an epidural injection.

On June 7, 2023, Mr. Argabright returned to Dr. Patel for treatment regarding his lower back. Dr. Patel's assessment was the same as the previous visit, and he opined that Mr. Argabright would benefit from epidural injections.

On September 21, 2023, the Board issued an order that reversed the claim administrator's order of February 3, 2023, and authorized bilateral medial branch nerve blocks at L3-L4, L4-L5, and L5-S1.

On November 7, 2023, Dr. Mukkamala performed a second IME of Mr. Argabright. Dr. Mukkamala diagnosed a lumbar sprain/strain superimposed on preexisting noncompensable degenerative spondyloarthropathy, for which he determined Mr. Argabright had reached MMI. With regard to the disc bulges at L2, L3, L4, L5, and S1, Dr. Mukkamala opined that there was an exacerbation but not an aggravation, and that the ongoing conditions were causally related to the noncompensable preexisting degenerative spondyloarthropathy. Dr. Mukkamala opined that there was no objective evidence of radiculopathy, no evidence of loss motion segment integrity, and no indication of need for a repeat MRI.

On December 4, 2023, Mr. Argabright followed up with Dr. Patel regarding his lower back pain. Dr. Patel noted that Mr. Argabright was in severe pain, and that he previously had medial branch blocks with excellent diagnostic relief, greater than 80%. He stated that the relief had worn off, and it was reasonable to try branch blocks again without steroids and see if Mr. Argabright gets similar relief with anesthetic only, with medial branch ablations considered as a potential next step. Dr. Patel requested authorization for bilateral medial branch nerve blocks at L3-L4, L4-L5, and L5-S1 for the lumbar sprain,

lumbar facet syndrome, and lumbago. On December 6, 2023, the claim administrator issued an order denying authorization for the bilateral medial branch nerve blocks at L3-L4, L4-L5, and L5-S1. Mr. Argabright protested this order.

On July 8, 2024, the Board issued an order reversing the claim administrator's order and authorizing bilateral medial branch nerve blocks at L3-L4, L4-L5, and L5-S1. The Board stated that pursuant to this Court's decision in *Blackhawk Mining, LLC v. Argabright*, __ W. Va. __, __ S.E.2d __, 2023 WL 3167476 (W. Va. Ct. App. 2023), Mr. Argabright is entitled to treatment for the symptoms that developed following the compensable injury.² Further, the Board concluded that the requested treatment is medically necessary and reasonably required for the compensable injury. It is from this order that Blackhawk now appeals.³

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:

² In *Blackhawk Mining, LLC v. Argabright*, __ W. Va. __, __ S.E.2d __, 2023 WL 3167476 (W. Va. Ct. App. 2023), this Court addressed the issue of compensability of Mr. Argabright's disc bulges. This Court reversed the Board's October 21, 2022, order, in part, and found that it erred in summarily concluding that Mr. Argabright's preexisting disc bulges were compensable. This Court affirmed the Board's order in part and concluded that treatment of the newly symptomatic disability with a referral to Dr. Patel was appropriate, as Mr. Argabright's preexisting discs and degenerative disc desiccation were asymptomatic prior to the compensable injury, and the treatment of his pain flowed from the compensable injury, not the preexisting condition. This decision was affirmed by the Supreme Court of Appeals of West Virginia in *Argabright v. Blackhawk Mining, LLC*, No. 23-381, 2024 WL 3984505 (W. Va. Aug. 27, 2024) (memorandum decision).

³ Blackhawk's appeal is limited to the issue of authorization for medial branch nerve blocks at L3-4, L4-5, and L5-S2. This court previously affirmed the Board's order authorizing an MRI of Mr. Argabright's lumbar spine in *Blackhawk Mining, LLC v. Harris Argabright*, No. 24-ICA-184, 2024 WL 5010603 (W. Va. Ct. App. 2024) (memorandum decision).

- (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*, 250 W. Va. 510, 905 S.E.2d 528 (2024).

On appeal, Blackhawk argues that medial branch blocks were neither medically necessary nor reasonably required to treat the compensable injury in this claim. Further, Blackhawk asserts that the Board’s order was in violation of the language of West Virginia Code §§ 23-4-1 and 23-4-3, and contrary to both this Court’s prior opinion and Syllabus Point 5 of *Moore v. ICG Tygart Valley, LLC*, 247 W. Va. 292, 879 S.E.2d 779 (2022).

The claim administrator must provide medically related and reasonably required medical treatment for a compensable injury. *See* W. Va. Code § 23-4-3 (2005) and W. Va. Code R. § 85-20-9.1 (2006).

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 are unable to conclude that the Board was clearly wrong in reversing the claim administrator’s order authorizing bilateral medial branch nerve blocks at L3-4, L4-5, and L5-S1.

Here, the record supports the Board’s conclusion that bilateral medial branch nerve blocks at L3-L4, L4-L5, and L5-S1 are medically necessary and reasonably required treatment for the compensable injury. The sole basis stated by the claim administrator for denying authorization was that the treatment was not medically related or reasonably required for the compensable injury. However, the Board determined that the claim administrator was incorrect, as this Court, as affirmed by the Supreme Court of Appeals of West Virginia previously ruled that Mr. Argabright is entitled to treatment of the newly symptomatic disability that followed his compensable injury. Although Blackhawk argues that the Board’s order is contrary to this Court’s prior opinion, the referral to Dr. Patel was initially authorized by this Court. Based on the foregoing, we conclude that the Board was not clearly wrong in finding that bilateral medial branch nerve blocks at L3-L4, L4-L5, and L5-S1 were medically necessary and reasonably required treatment for the compensable injury.

Finally, Blackhawk argues that the Board's order ignores the Supreme Court of Appeals of West Virginia's holding in Syllabus Point 5 of *Moore v. ICG Tygart Valley, LLC*, 879 S.E.2d 779, 247 W. Va. 292 (2022), which states:

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 afterwards. 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 other facts of the case, raises a natural inference of causation. This presumption is not conclusive, it may be rebutted by the employer.

We find no merit in this argument, as both this Court and the Board found that Mr. Argabright's pain results from the compensable injury. Finding no error, we affirm the Board's July 8, 2024, order.

Affirmed.

ISSUED: February 28, 2025

CONCURRED IN BY:

Chief Judge Charles O. Lorensen
Judge Daniel W. Greear
Judge S. Ryan White