

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

KAREN WALKER,
Claimant Below, Petitioner

FILED
June 6, 2025

v.) No. 24-ICA-419 (JCN: 2021000769)

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

GOODWILL INDUSTRIES OF KANAWHA VALLEY, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Karen Walker appeals the September 24, 2024, order of the Workers' Compensation Board of Review ("Board"). Respondent Goodwill Industries of Kanawha Valley, Inc. ("Goodwill") filed a response.¹ Ms. Walker did not reply. The issue on appeal is whether the Board erred in affirming the claim administrator's order, which denied the addition of chronic regional pain syndrome ("CRPS"), lumbar radiculopathy, swelling of the left lower leg, and post-traumatic stress disorder ("PTSD") to the claim as compensable conditions.

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.

On July 8, 2020, Ms. Walker tripped over a clothing rack while at work and injured her knee, and she was seen at MedExpress on the same day. Ms. Walker reported that she fell at work and had pain in her left knee. The assessment was contusion of the left knee. On July 13, 2020, the claim administrator held the claim compensable for a contusion of the left knee.

Ms. Walker was seen by David Felder, M.D., on August 11, 2020, and she reported having attended five physical therapy sessions but claimed they did little to help the pain. Dr. Felder diagnosed a contusion of the left anterior thigh and a strain of the left tibialis anterior muscle, both of which were completely resolved of symptoms. Dr. Felder did not believe an MRI was necessary as Ms. Walker had been inconsistent with her areas of discomfort and he noted that his objective findings did not align with Ms. Walker's

¹ Ms. Walker is represented by Patrick K. Maroney, Esq. Goodwill is represented by Steven K. Wellman, Esq., and James W. Heslep, Esq.

subjective complaints. Although Ms. Walker expressed the need to limp when she walked, Dr. Felder indicated that she appeared to walk with minimal discomfort and that she appeared to be comfortable while sitting. Dr. Felder stated that Ms. Walker could work on modified duty and that with additional physical therapy, she likely could return to full duty in two weeks.

On August 27, 2020, Ms. Walker returned to see Dr. Felder and reported severe pain at times and no pain at others. Dr. Felder opined that her complaints were confusing and noted that Ms. Walker had been inconsistent with physical therapy. Further, he noted that she was hysterical and crying due to pain at times, while at other times she sat very comfortably without pain. At times she ambulated without signs of discomfort, while at other times she complained of pain so severe she could barely move. Dr. Felder also noted that Ms. Walker's description of her pain was incompatible with her reports at the last visit. Dr. Felder reported observing Ms. Walker walking in the office parking lot and noted that she appeared to be able to get into the driver's side of her Jeep and drive unassisted with minimal discomfort, yet she cried out in pain when he touched her leg. He diagnosed left thigh pain and left leg pain. Ms. Walker was seen by Kara Cipriani, FNP-BC, on September 11, 2020. Ms. Walker was assessed with left knee pain and left leg swelling.

Ms. Walker was seen by Chad Lavender, M.D., on October 26, 2020, and he diagnosed her with patellofemoral arthritis with a geode in the proximal tibia. Dr. Lavender noted that Ms. Walker had not complied with the recommended testing and stated that he was uncertain of the nature of her pain, which did not seem to be coming from her knee based on review of a recent MRI.

On November 4, 2020, Ms. Walker underwent an independent medical evaluation ("IME") performed by Bruce Guberman, M.D. Dr. Guberman's impression was a history of a contusion of the left knee and leg. According to Dr. Guberman, Ms. Walker's compensable condition had not worsened, and her subjective complaints were only partially supported by objective medical evidence. Dr. Guberman opined that Ms. Walker had reached maximum medical improvement ("MMI"), had no permanent impairment, and needed no further treatment for the compensable injury.

Ms. Walker was examined by Frederic Pollock, M.D., an orthopedic surgery specialist, on November 17, 2020. Ms. Walker presented in a wheelchair and claimed that she was unable to walk without severe pain. Dr. Pollock's impression was an acute and chronic strain of the left leg and possible CRPS, and he referred her back to Dr. Lavender for further treatment. Subsequently, Ms. Walker requested a referral to yet another orthopedic surgeon, Matthew Stover, M.D.

On June 21, 2021, Pramod Kumar, M.D., administered a left anserine bursa steroid injection under ultrasound guidance for the diagnosis of left pes anserine bursitis. A

treatment note by PA-C Christopher Kennedy dated September 1, 2021, indicated that Ms. Walker had surgery six or seven months prior, and assessed Ms. Walker with pes anserinus bursitis of the left knee. Two computed radiology reports dated January 6, 2022, of Ms. Walker's left femur showed no osseous or soft tissue abnormalities although mild osteoarthritic changes were noted. Ms. Walker underwent an MRI of her left knee on March 6, 2023, revealing possible lateral patellar retinacular disruption, likely secondary to prior surgery; and a focal well-defined T2 hyperintense lesion in the proximal tibial metadiaphysis, demonstrates no interval change compared to prior study; and a benign lesion.

Correspondence from Nicholas Raubitschek, M.D., dated March 22, 2023, indicated that he and a pain management specialist were treating Ms. Walker for CRPS, lumbar radiculopathy, swelling of lower leg, and PTSD. Dr. Raubitschek opined that these symptoms began following the injury at work when Ms. Walker tripped over a clothes rack and suffered a left tibia/fibula fracture.

On May 4, 2023, Randall Short, M.D., completed a Physician Review report recommending that the request to add CRPS, lumbar radiculopathy, swelling of lower leg, and PTSD be denied. Dr. Short stated that an EMG/NCS of the left leg dated September 29, 2020, was normal, and radiculopathy was not demonstrated. Dr. Short noted that Ms. Walker's left knee was injected with corticosteroids without significant improvement. Dr. Short further noted that Dr. Raubitschek did not submit objective medical findings to support the requested diagnoses updates. Dr. Short opined that there was no evidence in the medical records to support lumbar radiculopathy or CRPS, and there was no evidence of a significant event that would lead to the development of PTSD or objective medical evidence to support that diagnosis.

By grievable order dated May 9, 2023, the claim administrator denied the request to add CRPS, lumbar radiculopathy, swelling of lower leg, and PTSD. Ms. Walker filed a grievance. On June 7, 2023, the Encova Select Grievance Board found that the grievable order should be affirmed. Ms. Walker protested this order.

A radiology report dated May 26, 2023, indicated that Ms. Walker's left knee showed no acute fractures or dislocation; moderate joint space narrowing and multiple osteophytes were noted. On June 21, 2023, Ms. Walker underwent an EMG study of her legs. Glenn Goldfarb, M.D., interpreted the study as demonstrating no abnormalities, radiculopathy was not demonstrated. An NCS/limited EMG study of Ms. Walker's left leg was performed on July 3, 2023. Dr. Jared Hollinger interpreted the study as normal. Ms. Walker underwent a lumbar MRI on August 16, 2023, revealing no advanced canal stenosis or focal cord lesion.

On August 21, 2023, Ms. Walker was seen by Kellee Boster, PsyD, for a behavioral health intake. Dr. Boster diagnosed somatic symptom disorder, with predominant pain (provisional); rule-out intellectual developmental disorder; and rule-out trauma and stressor-related disorder. Dr. Boster indicated that she would evaluate Ms. Walker again for additional diagnostic clarity for post-traumatic stress and other possible diagnoses.

A report from Rudy Malayil, M.D., dated August 24, 2023, indicated that Ms. Walker had failed conservative treatment/therapy including rest, six weeks of physical therapy, home exercise program, and non-steroidal anti-inflammatory drugs. Dr. Malayil assessed lumbar radiculopathy; chronic low back pain; myofascial pain; chronic pain syndrome; CRPS, type II, left lower limb; swelling of lower leg; generalized aches and pains; and PTSD. On September 6, 2023, Dr. Malayil administered a lumbar sympathetic block L3 for the diagnosis of CRPS, type I of the left lower extremity.

On September 21, 2023, Ms. Walker followed up with Dr. Boster, and reported she continues to feel anxious every time she drives by a Goodwill store and when she remembers the day the incident occurred in July of 2020. Ms. Walker noted that her chest starts pounding and she starts crying and feeling scared when she drives by the Goodwill where the incident happened. Dr. Boster again diagnosed a somatic symptom disorder.

Ms. Walker was seen by Christopher Surber, LPCC, ALPS, LSW, on December 18, 2023. Ms. Walker reported continued distress, upset feelings and physiological reactions when reminded of her work injury from three years prior. She reported anxiety if she sees a Goodwill sign or billboard. Ms. Walker indicated that she wanted therapy to specifically focus on her trauma and flashbacks. Mr. Surber assessed moderate episode of recurrent major depressive disorder, generalized anxiety disorder, and PTSD.

On February 22, 2024, Ms. Walker was deposed, and she testified that she fell over the base of a clothes rack, injuring her leg and knee. Ms. Walker stated that a big knot or cyst popped up instantly and her leg was red, and she was unable to bear weight on the leg. Ms. Walker testified that she had pain throughout her entire leg, which was swollen, hot, red, and disfigured. Ms. Walker further testified that her back symptoms are related to the work injury. Ms. Walker admitted that she had prior low back injuries but indicated that they resolved before the compensable injury occurred. Ms. Walker denied any problems with her leg prior to the compensable injury. Ms. Walker testified that since her compensable injury, she wakes up with nightmares throughout the night and couldn't get to sleep because she would think about how this happened. Ms. Walker further testified that she obsessed about her injury all day long. Ms. Walker stated that she would not step foot in Goodwill because of what they did to her and if she would think about what happened to her, her heart would start racing and she would have flashbacks of what happened.

Ms. Walker was seen by Felix Cheung, M.D., an orthopedic oncologist, on April 17, 2024. Ms. Walker had a lesion in the left proximal tibia which was either a benign cartilage tumor or a cyst in the proximal tibia from the joint itself. The assessment was benign neoplasm of long bone of left lower limb. On May 22, 2024, Ms. Walker followed up with Dr. Cheung, who had reviewed a recent MRI and opined that the lesions appear to be stable compared to the ones several years ago. Dr. Cheung assessed intraosseous synovial cyst. A report from Dr. Malayil dated May 29, 2024, indicated that Ms. Walker's diagnoses were lumbar radiculopathy; chronic pain syndrome; generalized aches and pains; chronic low back pain; myofascial pain; CRPS, type II, lower limb; swelling of lower leg; and PTSD.

On September 24, 2024, the Board affirmed the claim administrator's order denying the addition of CRPS, lumbar radiculopathy, swelling of the left lower leg, and PTSD to the claim as compensable conditions. The Board found that a preponderance of the evidence fails to establish that CRPS, lumbar radiculopathy, swelling of lower leg, and PTSD are causally related to the compensable injury. Ms. Walker now appeals the Board's order.²

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

² Ms. Walker is not appealing the portion of the Board's order affirming the rejection of the addition of swelling of the lower leg to the claim as a compensable condition.

Ms. Walker argues that Dr. Pollock noted that CRPS was a possible diagnosis soon after the injury and her symptoms of pain following the injury establish this diagnosis. Ms. Walker further argues that both Dr. Raubitschek and Dr. Malayil found that she has lumbar radiculopathy, and their opinions have not been rebutted. Finally, Ms. Walker argues that the evidence establishes that her PTSD is a direct result of her compensable injury. We disagree.

Three elements must coexist in workers' compensation cases to establish compensability: (1) a personal injury (2) received in the course of employment and (3) resulting from that employment. *See Barnett v. State Workmen's Comp. Comm'r*, 153 W. Va. 796, 172 S.E.2d 698 (1970); *Sansom v. Workers' Comp. Comm'r*, 176 W. Va. 545, 346 S.E.2d 63 (1986).

West Virginia Code of State Rules § 85-20-12.4 (2006) provides that:

[s]ervices may be approved to treat psychiatric problems only if they are a direct result of a compensable injury. As a prerequisite to coverage, the treating physician of record must send the injured worker for a consultation with a psychiatrist . . . to determine 1) if a psychiatric problem exists; 2) whether the problem is directly related to the compensable condition; and 3) if so, the specific facts, circumstances, and other authorities relied on to determine the causal relationship.

Based upon that report, the claim administrator will make a determination regarding compensability. *See Hale v. W. Va. Office of the Ins. Comm'r*, 228 W. Va. 781, 724 S.E.2d 752 (2012) (the Supreme Court of Appeals of West Virginia held that the three-step process must be followed when a claimant is seeking to add a psychiatric disorder as a compensable component of the claim.); *see also E.B. v. Alliance Coal, LLC*, 22-ICA-278, 2023 WL 3863272 (W. Va. Ct. App. June 7, 2023) (memorandum decision).

Here, the Board determined that a preponderance of the evidence fails to establish that CRPS, lumbar radiculopathy, and PTSD are causally related to the compensable injury. The Board found that Drs. Raubitschek and Malayil indicated that Ms. Walker has CRPS, but they failed to address the diagnostic criteria or diagnostic studies as required by West Virginia Code of State Rules § 85-20-51. Further, the Board noted that Dr. Short opined that there was no evidence in the medical records to support CRPS. The Board also found that two EMG studies failed to show that Ms. Walker has lumbar radiculopathy. Finally, the Board found that the three-step process required by West Virginia Code of State Rules § 85-20-12.4 was not followed in this claim. Ms. Walker did not submit evidence from a psychiatrist which states that PTSD was caused by the compensable injury. Therefore, the diagnosis of PTSD cannot be established.

Upon review, we conclude that the Board was not clearly wrong in finding that Ms. Walker failed to establish that her diagnoses of CRPS, lumbar radiculopathy, and PTSD are causally related to the compensable injury. 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 cannot conclude that the Board was clearly wrong in affirming the claim administrator’s order denying the addition of CRPS, lumbar radiculopathy, swelling of lower leg, and PTSD to the claim as compensable conditions.

Accordingly, we affirm the Board’s September 24, 2024, order.

Affirmed.

ISSUED: June 6, 2025

CONCURRED IN BY:

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