

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

**SPARTAN MINING COMPANY c/o ANR,
Employer Below, Petitioner**

v.) No. 24-ICA-485

(JCN: 2024024110)

**MARK BURGESS,
Claimant Below, Respondent**

**FILED
June 6, 2025**

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

MEMORANDUM DECISION

Petitioner Spartan Mining Company c/o ANR (“Spartan”) appeals the November 21, 2024, order of the Workers’ Compensation Board of Review (“Board”). Respondent Mark Burgess timely filed a response.¹ Spartan filed a reply. The issue on appeal is whether the Board erred in reversing the claim administrator’s order, which rejected the claim, holding the claim compensable, and remanding to the claim administrator for a determination of the compensable conditions in the claim and Mr. Burgess’ entitlement to temporary total disability (“TTD”) benefits.

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.

Prior to the compensable injury in this case, Mr. Burgess presented to MedExpress on February 27, 2024, with complaints of low back pain radiating into the right hip and leg. Mr. Burgess reported that his symptoms had been present for about a week and had progressively worsened. Physical examination revealed tenderness to palpation at the paraspinal region at L5, the iliolumbar region, the gluteus medius, and the sciatic notch. Lumbar flexion and extension were limited due to pain. Lateral flexion was limited on the left and right. The assessment was low back pain, and an x-ray of the lower back was ordered. The x-ray, performed on the same date, revealed straightening of the lumbar lordosis and loss of disc height at L5-S1.

¹ Spartan is represented by Sean Harter, Esq. Mr. Burgess is represented by Reginald D. Henry, Esq., and Lori J. Withrow, Esq.

On May 23, 2024, and May 30, 2024, Mr. Burgess underwent a physical therapy evaluation. Mr. Burgess reported low back pain that radiated to the left lower extremity. Mr. Burgess was diagnosed with low back pain with radiculopathy, piriformis syndrome, and sciatica left sided.

Turning to the compensable injury relevant to this appeal, on July 20, 2024, Mr. Burgess presented to the ER at Raleigh General Hospital with complaints of low back pain radiating into the left hip and down the left leg to the knee. Mr. Burgess reported that his symptoms started immediately after he lifted some bags weighing approximately 100 to 150 pounds at work. At the time of this injury, Mr. Burgess was twenty-five years old. Mr. Burgess was able to walk, but with great difficulty. Physical examination revealed tenderness with palpation of the paraspinal muscles in the left lumbar area. The assessment was differential diagnosis of herniated disc, shingles, scoliosis, cauda equina syndrome, lumbar fracture, and muscle strain. The ER provider recommended referral to an orthopedic spine surgeon for further evaluation, physical therapy, and a lumbar MRI.

Mr. Burgess completed an Employees' and Physicians' Report of Occupational Injury or Disease form on July 20, 2024, which indicated that he was picking up two bags of rock dust on the same date, when he fell and injured his back. Also on July 20, 2024, the physicians' portion of the form was completed by a medical provider at Raleigh General Hospital. The provider diagnosed an occupational injury resulting in low back pain with sciatica. The provider opined that the injury aggravated a prior injury/disease, and Mr. Burgess was released to modified duty work with no lifting over ten pounds.

On July 22, 2024, Mr. Burgess presented to the ER at Beckley ARH, with complaints of a sudden onset of back pain after bending down to tend to a dog kennel while at home. The pain brought Mr. Burgess to his knees, and he was unable to get up without assistance. Physical examination revealed muscle spasms and spinal tenderness. A CT scan of Mr. Burgess' lumbar spine revealed a moderate annular disc bulge causing mild to moderate spinal canal stenosis and bilateral foraminal stenosis at L5-S1, and a mild annular disc bulge at L4-5. Mr. Burgess was discharged with a clinical diagnosis of lumbar radiculopathy and a herniated disc.

On July 23, 2024, Mr. Burgess was seen by Rajesh Patel, M.D. Mr. Burgess reported that he developed immediate pain when he lifted heavy bags at work on July 20, 2024, which progressed over the next few days. An MRI of Mr. Burgess' spine revealed moderate disc degeneration, narrowing, and a moderate broad-based disc protrusion with an additional 10mm central/left paracentral extruded disc fragment or nucleus pulposus at L5-S1 indenting the thecal sac, asymmetrically narrowing the spinal canal, and compressing the left corresponding nerve roots. On July 30, 2024, Mr. Burgess underwent a microscopic lumbar discectomy at L5-S1. The post-operative diagnoses were large lumbar disc herniation at L5-S1 on the left, severe intractable pain, progressively worsening left S1 radiculopathy, and lumbar sprain.

On August 22, 2024, the claim administrator issued an order rejecting Mr. Burgess' claim on the basis that he did not sustain a new injury in the course of, and resulting from, his employment on July 20, 2024. The claim administrator stated that Mr. Burgess' medical records reveal that he had similar preexisting complaints of low back pain radiating to the left leg in March 2024. Further, the claim administrator noted that the diagnosis code on the Report of Occupational Injury is lumbago with sciatica, which is a symptom, not a diagnosis. The claim administrator also concluded that Mr. Burgess had an intervening event at his home on July 22, 2024, which precipitated his need to return to the ER and subsequently his hospitalization and surgery. Mr. Burgess protested this order to the Board.

Mr. Burgess was deposed on October 14, 2024, and he testified that prior to July 20, 2024, he had not had any injuries involving his lumbar spine. Mr. Burgess indicated that on July 20, 2024, he squatted down to grab two bags of dust, and threw them over his shoulder, when he lost feeling in his legs and experienced pain at a level that he had not felt before. Further, he stated that his legs went numb, he fell flat on his back, and then crawled over to his ride and radioed for help. Mr. Burgess indicated that he was scheduled to work on July 22, 2024, but that as he bent down to open his dog's kennel door, his legs went numb, and a sharp pain shot up his back. Mr. Burgess testified that he had previously developed some low back and left lower extremity pain in February and March of 2024, and that he was treated with chiropractic treatments, a steroid injection, and physical therapy. Mr. Burgess was not taking any medication for his low back at the time of the July 20, 2024, injury, and he was able to perform his regular job duties prior to the injury. Mr. Burgess denied that he had any numbness in his lower extremities prior to July 20, 2024.

By order dated November 21, 2024, the Board reversed the claim administrator's order and held the claim compensable for a lumbar injury. The Board further ordered the claim administrator to enter protestable orders identifying the appropriate compensable diagnoses in the claim and addressing Mr. Burgess' entitlement to temporary total disability benefits ("TTD") benefits. It is from this order that Spartan now appeals.

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).

On appeal, Spartan argues that the Board erroneously applied *Gill v. City of Charleston*, 236 W. Va. 737, 783 S.E.2d 857 (2016), to the claim. Further, Spartan asserts that the Board’s decision to remand the claim to the claim administrator to determine Mr. Burgess’ compensable diagnoses was clearly wrong because his diagnoses were not expanded beyond the preexisting diagnoses of lower-back pain/lumbago and left-sided sciatica until after Mr. Burgess sustained an injury at his home on July 22, 2024. Spartan also avers that the Board arbitrarily remanded the claim to the claim administrator to address Mr. Burgess’ alleged entitlement to TTD benefits. We disagree.

As the Supreme Court of West Virginia held in *Gill v. City of Charleston*, 236 W. Va. 737, 783 S.E.2d 857 (2016):

A noncompensable preexisting injury may not be added as a compensable component of a claim for workers’ compensation medical benefits merely because it may have been aggravated by a compensable injury. To the extent that the aggravation of a noncompensable preexisting injury results in a [discrete] new injury, that new injury may be found compensable.

Id. at 738, 783 S.E.2d at 858, syl. pt. 3.

The Supreme Court clarified its position in *Moore v. ICG Tygart Valley, LLC*, 247 W. Va. 292, 879 S.E.2d 779 (2022), holding:

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

Id. at 294, 879 S.E.2d at 781, syl. pt. 5.

Upon review, we conclude that the Board was not clearly wrong in finding that Mr. Burgess sustained a compensable low back injury while at work. In order for a claim to be held compensable, three elements must coexist: (1) a personal injury, (2) received in the course of employment, and (3) resulting from that employment. Syl. Pt. 1, *Barnett v. 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). Here, Mr. Burgess testified that he injured his low back while lifting two heavy bags of rock dust at work. We note that Mr. Burgess' description of the pain is consistent throughout the record, as severe pain in his lower back radiating down his left hip and leg, including numbness in the lower extremities. The Board concluded that the medical evidence, including records indicating that Mr. Burgess was seen at the ER on July 20, 2024, with complaints of low back pain radiating into the left hip and down the left leg to the knee, supports his testimony. Further, the record establishes that Mr. Burgess was able to perform his job duties until the injury on July 20, 2024. Based on the foregoing, we conclude that sufficient evidence exists to support the Board's conclusion that Mr. Burgess demonstrated that he sustained an occupational injury.

Further, we conclude that the Board was not clearly wrong in remanding the claim back to the claim administrator for a determination of the compensable conditions in the claim. The Supreme Court of Appeals of West Virginia has previously upheld the practice of the Board, in some cases, to hold a claim compensable and remand the matter for the claim administrator to ascertain the appropriate compensable condition. *See Constellium Rolled Products v. Myers*, No. 20-0281, 2021 WL 2580719, at *3 (W. Va. June 3, 2021) (memorandum decision) (finding that the Board correctly remanded the matter for a determination of the compensable condition(s) in the claim after claimant showed by a preponderance of the evidence that he sustained an occupational injury); *see also Sevita Health v. Wyatt*, No. 23-ICA-385, 2024 WL 1588848, at *4 (W. Va. Ct. App. Feb. 27, 2024) (memorandum decision). Accordingly, we find no merit in Spartan's arguments in this regard.

Likewise, we find no merit in Spartan's assignment of error regarding the Board's remand of the claim to the claim administrator for a determination of Mr. Burgess' entitlement to TTD benefits. West Virginia Code § 23-4-1c(b) requires that TTD benefits be paid to a claimant if the disability from a compensable injury will last longer than three days. Thus, the Board's decision properly remanded to the claim administrator to determine whether TTD benefits should be awarded due to the compensable injury.

Accordingly, we affirm the Board's November 21, 2024, order.

Affirmed.

ISSUED: June 6, 2025

CONCURRED IN BY:

Chief Judge Charles O. Lorensen

Judge Daniel W. Greear

Judge S. Ryan White