

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

**CHARLESTON AREA MEDICAL CENTER, INC.,
Employer Below, Petitioner**

v.) No. 24-ICA-488 (JCN: 2022002009)

**KERRI THAXTON,
Claimant Below, Respondent**

**FILED
June 6, 2025**

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

MEMORANDUM DECISION

Petitioner Charleston Area Medical Center (“CAMC”) appeals the November 7, 2024, order of the Workers’ Compensation Board of Review (“Board”). Respondent Kerri L. Thaxton filed a response.¹ CAMC filed a reply. The issue on appeal is whether the Board erred in reversing the claim administrator’s order, which denied the request of Ms. Thaxton’s treating surgeon, David Ede, M.D., to refer Ms. Thaxton for a second opinion regarding treatment for the compensable injury to her right shoulder.

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 21, 2021, Ms. Thaxton sustained an occupational injury to her right shoulder while working for CAMC at its Teays Valley Hospital location. The occupational injury occurred while Ms. Thaxton was pulling a patient off of a hospital bed. Right shoulder x-rays were performed on July 26, 2021. The findings were that the bones and soft tissues were unremarkable, and there was no evidence of fracture or dislocation. The claim administrator issued an order dated August 12, 2021, holding the claim compensable for strain of unspecified muscle, fascia, and tendon at shoulder and upper arm level, initial encounter.

Ms. Thaxton underwent a right shoulder MRI on August 17, 2021, which revealed: (1) probable anterior superior labral tear; (2) mild diffuse glenohumeral cartilage thinning; (3) loss of normal fat signal in the rotator interval suggestive of adhesive capsulitis; (4)

¹ Employer is represented by H. Dill Battle III, Esq. Claimant is represented by G. Patrick Jacobs, Esq.

mild acromioclavicular joint osteoarthritis; (5) mild subacromial bursitis; and (6) abnormal diffuse low T1 signal, likely red marrow hyperplasia/related to anemia but nonspecific.

On August 24, 2021, Ms. Thaxton was seen at the CAMC Orthopedics Clinic by Tyler Halstead, PA-C, who noted that Ms. Thaxton reported right shoulder pain and limited range of motion, as well as that she had attended two physical therapy sessions in an attempt to address those issues. PA Halstead further noted that the MRI of the right shoulder showed subacromial bursitis, mild arthritis, and a probable SLAP tear. The assessment was SLAP lesion of right shoulder for which PA Halstead recommended a subacromial cortisone injection and increased physical therapy. PA Halstead's clinic notes also listed a diagnosis of subacromial bursitis of right shoulder joint.

Ms. Thaxton had follow-up appointment on October 12, 2021, and was examined by Dr. Ede. At that time, Ms. Thaxton reported excellent improvement with physical therapy. Dr. Ede advised her to continue light exercise for continued maintenance of the injury and released her to return to full duty work on October 18, 2021. However, Dr. Ede informed Ms. Thaxton that if she developed recurrent or worsening symptoms, surgical repair may be necessary.

Ms. Thaxton underwent an independent medical examination ("IME") with David Soulsby, M.D., on December 7, 2021. During the IME, Ms. Thaxton reported that her right shoulder was gradually getting worse. Specifically, she indicated that her range of motion and flexion continued to be painful, there was pain any time she attempted to raise her arm to the front, she experienced popping sensations, her arm had gone "dead" on one or two occasions, and that she had clavicle pain. Dr. Soulsby's assessment was labral tear right shoulder and impingement syndrome right shoulder. He determined that Ms. Thaxton had not reached maximum medical improvement ("MMI"). Dr. Soulsby also found that further treatment was necessary because the injury was five months old and reasonable nonsurgical treatment had been unsuccessful. He opined that an arthroscopic evaluation of the shoulder with repair of the SLAP lesion and correction of the impingement syndrome was indicated. Dr. Soulsby evaluated Ms. Thaxton a second time on March 28, 2022. It was determined that her condition had not improved and that she had not reached MMI.

During a follow-up appointment on December 14, 2021, Dr. Ede and Ms. Thaxton discussed surgery for the right shoulder SLAP tear. On April 14, 2022, the claim administrator approved Dr. Ede's request for right shoulder arthroscopy with SLAP repair versus biceps tenodesis with possible subacromial decompression.

Dr. Ede performed surgery on May 2, 2022, for the preoperative diagnosis of SLAP tear right shoulder and the postoperative diagnosis of SLAP tear right shoulder and subscapularis partial tendon tear. The procedure performed was right shoulder arthroscopy

with repair superior labrum anterior posterior tear and repair partial tear subscapularis tendon, right shoulder.

On September 20, 2022, the claim administrator approved Dr. Ede's request for an MRI arthrogram of Ms. Thaxton's right shoulder. The MRI was performed on September 27, 2022. Ms. Thaxton returned to Dr. Ede for a follow-up examination on October 4, 2022. At that time, Dr. Ede noted that Ms. Thaxton continued to have postsurgical pain in her right shoulder when performing certain movements. Dr. Ede opined that her subscapularis repair did not heal, and he recommended a revision subscapularis tendon repair. By order dated October 19, 2022, the claim administrator approved Dr. Ede's request to perform a right shoulder arthroscopy with revision subscapularis tendon repair.

On October 26, 2022, Dr. Ede performed a right shoulder arthroscopy with debridement of partial subscapularis tendon tear, biceps tenotomy, right shoulder. Ms. Thaxton's preoperative diagnosis was right shoulder pain status post arthroscopy with subscapularis tendon repair and SLAP repair. Her postoperative diagnosis was bicipital tendonitis and labral inflammation with very small subscapularis tendon tear.

Ms. Thaxton had a post-surgical follow-up with Dr. Ede on November 8, 2022. She reported that she had gone to physical therapy three times and rated her pain as a 4 out of 10. Dr. Ede recommended that Ms. Thaxton continue physical therapy and complete treatment. He discussed with her that there was a lot of inflammation around the labrum and biceps tendon. As such, Dr. Ede indicated to Ms. Thaxton that a biceps tenotomy would be a good surgical option for treatment. At this appointment, Dr. Ede administered a cortisone injection to address the inflammation.

Ms. Thaxton underwent an MRI of her right shoulder on May 9, 2023. The impression was degeneration and tear of anterior superior labrum. At a subsequent appointment on May 16, 2023, Dr. Ede noted that Ms. Thaxton reported her pain as 3 out of 10, she had limited range of motion and was experiencing right shoulder pain anterolaterally. Dr. Ede observed that Ms. Thaxton continued to have the anterolateral shoulder pain despite failed SLAP repair treated with biceps tenotomy. He indicated that the MRI was unrevealing in terms of finding an identifiable pathology for treatment, and that he would refer her for a second opinion.

Dr. Soulsby evaluated Ms. Thaxton for a third time on June 7, 2023. He noted that she reported some improvement following her second surgery but that she was still experiencing discomfort. Specifically, Dr. Soulsby noted that Ms. Thaxton reported that she continued to have pain in the anterior and lateral aspect of the right shoulder, which was intermittent and associated with lifting, reaching overhead, and activities such as drying her hair. The second surgery relieved the constant pain. Ms. Thaxton reported that her motion was improving but was still somewhat limited, and that she was not presently

working. Dr. Soulsby observed that her May 9, 2023, arthrogram/MRI of her right shoulder revealed degenerative changes in the superior labrum with a possible small tear. He indicated that Ms. Thaxton noted Dr. Ede had indicated to her that further surgery was not likely to be helpful. Dr. Soulsby's assessment was labral tear, right shoulder, and impingement syndrome, right shoulder. He found the result of Ms. Thaxton's second surgery to be fair/good.

Dr. Soulsby determined that Ms. Thaxton had reached MMI. Dr. Soulsby opined that he did not believe that any further treatment or diagnostic tests were necessary because the May 9, 2023, MRI showed that the surgical repair was intact. He noted that while there were some degenerative changes in her labrum, it was not expected that medication, therapy, nor further surgery would eliminate those degenerative changes. Dr. Soulsby noted that Dr. Ede believed that he had done what was possible to treat Ms. Thaxton's condition and that her treatment was complete. Dr. Soulsby opined that she could return to work with certain lifting restrictions and assigned her a 4% whole person impairment ("WPI") rating.

By order dated August 2, 2023, the claim administrator denied Dr. Ede's request to refer Ms. Thaxton for a second opinion because Dr. Soulsby had found her to be at MMI. On October 10, 2023, Dr. Ede issued a letter in which he stated that he disagreed with Dr. Soulsby's opinion that she had reached MMI. He noted that Ms. Thaxton suffers from shoulder pain as a result of compensable injury, she continues to experience pain despite surgical treatment, and that he believed a second opinion was necessary to confirm or deny the presence of additional pathology.

Hicks Manson, M.D., performed an IME of Ms. Thaxton on May 23, 2024. Dr. Manson opined that Ms. Thaxton sustained a right shoulder SLAP tear as a result of her work-related injury. Dr. Manson believed that her diagnosis for a partial subscapularis tear was likely degenerative in nature; however, he found that given how this injury usually occurs, it was not consistent with the manner in which she sustained her occupational injury. He noted that the partial subscapularis tear was found and repaired during Ms. Thaxton's initial shoulder arthroscopy. Dr. Manson found that there was no further treatment needed for the right SLAP tear, noting that she had already undergone a biceps tenotomy which is the definitive management for a SLAP tear. He found that Ms. Thaxton could return to work without restriction.

Dr. Manson further stated that he had reviewed Dr. Soulsby's June 7, 2023, IME and agreed that Ms. Thaxton had reached MMI. Dr. Manson assigned her 5% WPI. On August 1, 2024, Dr. Manson issued an addendum report in which he stated that he continued to believe that Ms. Thaxton was at MMI, and that Dr. Ede's request for a second opinion was not reasonable and necessary treatment and that it was unrelated to her compensable injury.

On November 7, 2024, the Board reversed the claim administrator's August 2, 2023, order and approved Dr. Ede's request to refer Ms. Thaxton for a second opinion. In its order, the Board noted the conflicting medical evidence in this case; specifically, the opinions of Drs. Soulsby and Manson who found Ms. Thaxton at MMI, and Dr. Ede's opposition to the finding of MMI and strong belief that a second opinion was reasonable and medically necessary to treat her compensable injury.

After evaluating all the evidence, the Board determined that Dr. Ede's history as Ms. Thaxton's treating surgeon placed him in the best position to determine the proper course of medical treatment for her, noting his extensive treatment of Ms. Thaxton with surgeries, physical therapy, and injections. Dr. Ede stated that she had not reached MMI, noting that she had injured her right shoulder at work, underwent surgeries and conservative treatment postoperatively, and continued to have persistent symptoms following failed SLAP repair surgery. Thus, it was Dr. Ede's opinion that a second opinion was medically necessary with respect to the continued treatment of Ms. Thaxton's compensable injury. Ultimately, the Board found Dr. Ede's opinions and recommendations to be more credible than those of Dr. Soulsby and Dr. Manson, who the Board found had merely evaluated Ms. Thaxton for the purposes of an IME. CAMC's appeal followed.

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, CAMC argues that the Board's ruling is not supported by the reliable, probative, and substantial evidence on the whole record. CAMC contends that the opinions

of Dr. Soulsby and Dr. Manson along with the medical evidence definitively establish that Ms. Thaxton has reached MMI, and that there is no medical evidence of her having a pathology that would be amenable to further treatment. Therefore, CAMC asserts that there is no basis to support Dr. Ede's request for a second opinion. We disagree.

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

Here, the Board considered the entire record, including the conflicting medical evidence, and determined by a preponderance of the evidence that Dr. Ede's familiarity with Ms. Thaxton's injury and history of treatment placed him in the most credible position to opine whether her compensable injury required further evaluation to determine if additional treatment was warranted. *See* W. Va. § Code 23-4-1g (2003) (requiring the resolution of workers' compensation claims to be based upon consideration of all relevant evidence, including assessing the evidence's credibility, materiality, and reliability, and that findings are to be supported by a preponderance of the evidence.).

Other than disagreeing with the Board's interpretation of the evidence and offering this Court an alternative application of the law to the facts, CAMC offers no substantive authority to convince this Court that deviation from the Board's findings of fact and conclusions of law is appropriate. Namely, CAMC offers no authority to support its contention that when one or more evaluating physicians place a claimant at MMI, that necessarily supplants any conflicting medical evidence. As such, we decline CAMC's invitation to reweigh the evidence and arrive at a more favorable conclusion. *See Coles v. Century Aluminum of W. Va.*, No. 23-ICA-81, 2023 WL 7202966, at *2 (W. Va. Ct. App. Nov. 1, 2023) (memorandum decision) (“[a]n appellate court will not reweigh the evidence as presented to the Board.”).

Upon review, we conclude that the Board was not clearly wrong in finding that the medical evidence supported Dr. Ede's basis for referring Ms. Thaxton for a second opinion. As the Supreme Court of Appeals of West Virginia has established, “[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 reversing the claim administrator's August 2, 2023, order.

Accordingly, we affirm the Board's November 7, 2024, order.

Affirmed.

ISSUED: June 6, 2025

CONCURRED IN BY:

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