

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

CHARLES E. COMAS,
Claimant Below, Petitioner

v.) No. 23-ICA-466 (JCN: 2023005626)

BASS PRO GROUP, LLC,
Employer Below, Respondent

ICA EFiled: Mar 25 2024

FILED 12:51 PM EDT

Transaction ID 72599525

March 25, 2024

C. CASEY FORBES, CLERK
INTERMEDIATE COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Charles E. Comas appeals the September 28, 2023, order of the Workers' Compensation Board of Review ("Board"). Respondent Bass Pro Group, LLC ("BPG") filed a response.¹ Mr. Comas filed a reply. The issue on appeal is whether the Board erred in affirming the claim administrator's order, which denied authorization for a left knee arthroplasty.

This Court has jurisdiction over this appeal pursuant to West Virginia Code § 51-11-4 (2022). 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 September 5, 2022, while employed by BPG, Mr. Comas slipped on a wet loading dock and twisted his knee. Mr. Comas filed an Employees' and Physicians' Report of Occupational Injury dated September 10, 2022, indicating that he suffered a left knee sprain due to an occupational injury.

The claim administrator issued two orders dated October 11, 2022, which authorized physical therapy and a left knee MRI. On October 20, 2022, Mr. Comas underwent a left knee MRI, which revealed tearing of the posterior horn of the medial meniscus with associated mild cartilage loss and osseous edema; small joint effusion; cartilage thickness is otherwise preserved; and lateral meniscus, cruciate, and collateral ligaments are intact. The claim administrator issued two orders dated October 26, 2022, which held the claim compensable for left knee sprain and authorized a consultation with Jeffrey Abbott, D.O.

¹ Mr. Comas is represented by Sandra K. Law, Esq. BPG is represented by Jane Ann Pancake, Esq., and Jeffrey B. Brannon, Esq.

On November 11, 2022, Mr. Comas was seen by Dr. Abbott. X-rays of Mr. Comas' left knee were performed revealing mild degenerative changes, small joint effusion, and peripheral vascular calcifications. Dr. Abbott diagnosed Mr. Comas with acute medical meniscus tear of the left knee with associated mild cartilage loss and osseous edema. Dr. Abbott sent a request for authorization of left knee arthroplasty on the same day.

David L. Soulsby, M.D., performed a record review and issued a report dated December 23, 2022. Based on a review of the left knee MRI of October 20, 2022, Dr. Soulsby indicated that he believed the meniscal tear to be a preexisting degenerative condition not caused by the compensable injury. Dr. Soulsby ultimately opined that the left knee arthroplasty was necessary but should not be authorized in this claim to treat a noncompensable condition.

On December 28, 2022, the claim administrator issued an order denying the request for authorization of a left knee arthroplasty based on Dr. Soulsby's report. Mr. Comas protested this order. On September 28, 2023, the Board affirmed the claim administrator's order, which denied authorization for left knee arthroplasty. The Board found that the requested treatment was not appropriate to treat Mr. Comas' compensable left knee sprain. Mr. Comas now appeals the Board's order.

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.

Duff v. Kanawha Cnty. Comm'n, 247 W. Va. 550, 555, 882 S.E.2d 916, 921 (Ct. App. 2022).

On appeal, Mr. Comas argues that the Board did not appropriately consider the progressive nature of the diagnosis. Mr. Comas further argues that medial meniscal tear of

the left knee should be held compensable. Mr. Comas also argues that left knee arthroplasty should be authorized based on a finding that medial meniscal tear of the left knee is a compensable condition. We disagree.

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

Here, the Board found that Mr. Comas had not established that left knee arthroplasty was medically related and reasonably necessary for treatment of the compensable condition. The Board noted that the evidence established that Mr. Comas was diagnosed with a left knee medial meniscal tear, but that diagnosis had not been added to the claim as a compensable condition. Considering that the only compensable condition in the instant claim is left knee sprain, the Board found that the requested treatment of a left knee arthroplasty was inappropriate to treat Mr. Comas' compensable condition based on the medical evidence.

Upon review, we cannot conclude that the Board was clearly wrong in finding that left knee arthroplasty is not an appropriate treatment for the compensable left knee sprain. 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 authorization for left knee arthroplasty.

We find no merit in Mr. Comas' argument that left knee medial meniscus tear should be found to be a compensable injury. Mr. Comas cites *Click v. ArcelorMittal USA*, No. 21-0128, 2022 WL 10219744 (W. Va. Oct. 18, 2022) (memorandum decision) in support of this argument. In *Click*, the Supreme Court of Appeals of West Virginia held that a claimant's left knee meniscal tear should be added to the claim as a compensable condition because the evidence established that the compensable injury caused the left knee meniscal tear. The instant case can be distinguished from *Click* because we find no indication in the record in the instant case that Mr. Comas has ever formally requested that the diagnosis be added as a compensable condition. Further, Dr. Soulsby opined that the tear is not compensable as it is a preexisting degenerative issue. Thus, we find that the question of compensability of additional conditions is not at issue in the instant case.

Accordingly, we affirm the Board's September 28, 2023, order.

Affirmed.

ISSUED: March 25, 2024

CONCURRED IN BY:

Chief Judge Thomas E. Scarr

Judge Charles O. Lorensen

Judge Daniel W. Greear

INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

ICA EFiled: Apr 25 2024
12:45PM EDT
Transaction ID 72829962

Charles E. Comas,
Claimant Below, Petitioner

v.) No. 23-ICA-466 (CN: 2023005626)

Bass Pro Group, LLC,
Employer Below, Respondent

MANDATE

On April 25, 2024, at a Regular Term of the Intermediate Court of Appeals of West Virginia, the following order was made and entered:

Pursuant to Rule 26 of the Rules of Appellate Procedure, the memorandum decision previously issued in the above-captioned case is now final and is certified to the Board of Review and to the parties. The decision of the Board of Review is affirmed, and it is ordered that the parties are to each bear their own costs. The Clerk is directed to remove this action from the docket of this Court.

A True Copy

Attest: /s/ Ashley N. Deem
Deputy Clerk of Court

