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June 21, 2024

Casey Forbes, Clerk of Court
West Virginia Supreme Court of Appeals
State Capitol Building
Building 1, Room EW-317
Charleston, WV 25305


RE: Charles E. Comas v. Bass Pro Group, LLC
Supreme Court No.: 24-290
Appeal No. 23-ICA-466
JCN: 2023005626
CCN: 0738-WC-22-0300987

Dear Mr. Forbes:

Enclosed please enclosed for filing by File and Serve Express e-filing the Brief on Behalf of Bass Pro Group, LLC, regarding the petitioner's appeal of the decision of the West Virginia Intermediate Court of Appeals.

Thank you for your consideration of this matter.

Very truly yours,


Jane Ann Pancake
Jeffrey B. Brannon

JAP/tlb

Enclosure

cc: Sandra K. Law, Esq.
Bass Pro Group, LLC
Melissa Hale, Corvel, *via e-mail*

BEFORE THE WEST VIRGINIA SUPREME COURT OF APPEALS
CHARLESTON, WEST VIRGINIA

CHARLES COMAS,

Petitioner,

v.

Supreme Court No.:	24-290
Intermediate Court No.	23-ICA-466
JCN:	2023005626

BASS PRO GROUP, LLC

Respondent.

BRIEF ON BEHALF OF RESPONDENT
BASS PRO GROUP, LLC

Jane Ann Pancake
WV Bar ID # 10743
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II. STATEMENT OF THE CASE

This claim is before this Court pursuant to the petitioner’s appeal from the March 25, 2024, decision of the Intermediate Court of Appeals (ICA), and the April 24, 2024, Mandate of the ICA regarding the March 25, 2024, decision. The ICA properly affirmed the Board of Review’s Order dated September 28, 2023, which properly affirmed the order of the claims administrator dated December 28, 2022, that denied authorization for a left knee arthroscopy. The decision of the ICA is clearly correct and not in clear violation of constitutional or statutory provision; is not clearly the result of erroneous conclusions of law; and is not based upon the Court's material misstatement or mischaracterization of particular components of the evidentiary record. The ICA correctly determined that the order denying the authorization for the left knee arthroscopy was proper. That decision should be affirmed.

The March 25, 2024, decision of the ICA and the September 28, 2023, Order of the Board of Review contain detailed Findings of Fact and Conclusions of Law based on the evidence available for review at the time of decision. The employer hereby adopts and incorporates by reference each and every Finding of Fact and Conclusion of Law contained in the September 28, 2023, Order of the Board of Review. Further, the following facts and evidence are of record and relevant to this Court's review of the issue before it.

The petitioner, Charles Comas, is presently 63 years of age with a date of birth of November 6, 1958. The petitioner completed Section I of a WC-1 Employees' and Physicians' Report of Injury form on September 10, 2022, alleging pain in the left knee after an alleged incident occurring on September 05, 2022. The petitioner described the alleged incident, as follows:

Twisted on wet dock plate.

Section II of the WC-1 was completed on September 10, 2022, by Mary Rankin, PA-C. Ms. Rankin indicated the petitioner had an occupational injury and diagnosed a left knee strain vs. sprain. (Petitioner's Exhibit 2)

The petitioner was treated at WVU Occupational Medicine in Wheeling on September 10, 2022, by Ms. Mary Rankin, a physician's assistant. Ms. Rankin noted the following "History of Present Illness":

Patient arrived alone by car. 63 year-old male who had concerns including left knee pain. Patient tells injury occurred on the fifth. He twisted his left knee on a wet pallet at work. He tells continued increasing pain since. He is able to bear weight but with pain. He tells pain worse with straightening leg. He denies previous history

An x-ray of the left knee revealed mild degenerative joint disease. The petitioner was diagnosed with a knee strain. (Petitioner's Exhibit 3)

The petitioner followed with Ross Tennant, a nurse practitioner at WVU Medicine, Occupational Medicine on September 15, 2022. Mr. Tennant recorded the following history:

Patient reports that on date of injury September 5, 2022 he tripped over a Pallet Jack and twisted his left knee. Patient states that he was experiencing significant amount of swelling discomfort to his left knee but was able to complete his shift that day. The patient continued to work the remainder of the week for his symptoms were not improving. Patient reported to the emergency department with hospital for further evaluation treatment on September 10, 2022. Diagnostic x-rays were negative for any acute fracture. Patient was instructed follow-up Corporate Health assess return to work status. Patient reports increased discomfort to his left knee whenever he is on his feet relief that time. Patient states that he has difficulty squatting. Patient reports intermittent instability to his left knee. Patient denies any paresthesias. Patient denies any color or temp changes to his left lower extremity. Patient denies any previous history of injuries to his left knee.

An x-ray of the left knee revealed mild degenerative joint disease. The petitioner was diagnosed with a knee strain. (Petitioner's Exhibit 4)

The petitioner attended physical therapy at Occupational Health at WVU on September 19, 2022. Under "Assessment", the following was noted:

Patient is a 63 year-old male presenting with left knee pain after a slip and fall at work on September 05, 2022. He could benefit from Physical Therapy to address his pain, decreased Range of Motion, decreased strength and functional limitations. He has a physicians diagnosis of Sprain of left knee with left knee pain; left knee mobility impairments and left knee muscle power impairments. He has a good rehab potential.

Patient received therapeutic exercises, Hot and cold modalities, implemented a home exercise program during his therapy visits. His pain remained a constant 3-5 out of 10. Patient tolerated his treatment sessions and made some progress with symptoms overall. (Petitioner's Exhibit 6)

The petitioner returned to see Mr. Tennant at Occupational Medicine on September 29,

2022. The petitioner noted he continued to experience discomfort to the medial aspect of his left knee. The diagnosis continued to be a left knee sprain. (Petitioner's Exhibit 4)

On October 13, 2022, when the petitioner returned to Occupational Health the following was noted:

Subjective: Patient states there has been no improvement pain discomfort to the medial aspect of his left knee with treatment from physical therapy. Patient denies any further instability. Patient denies any paresthesias. Patient denies any color or temp changes left lower extremity. Patient reports increased pain whenever he twists or turns suddenly.

Objective: There is no edema noted the patient's left knee but he remains tender to palpate along the medial joint line. Flexion once again reproduces his current symptoms. Thessaly test is positive. Patient continues to ambulate touch gait favoring his left side.

The petitioner was once again diagnosed with a left knee sprain. The petitioner was given work restrictions of no lifting or carrying anything over ten pounds and working in a sedentary position only. (Petitioner's Exhibit 4)

By order of the Claims Administrator dated October 26, 2022, the claim accepted as compensable for a diagnosis of a left knee sprain. (Petitioner's Exhibit 5) The petitioner did not protest the order.

The MRI of the left knee was performed on October 20, 2022. (Petitioner's Exhibit 3) The impression was:

MRI left knee: Degenerative 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. The lateral meniscus, cruciate, and collateral ligament are intact.

The petitioner returned to see Mr. Tennant on October 24, 2022. Under “Diagnosis and Plan”, the following was noted:

Left knee sprain. MRI of the left knee degenerative tearing of the posterior horn of medial meniscus with associated mild cartilage loss and osseous edema. There is a small joint effusion. Results were discussed with the patient in full. Patient will have consultation with orthopedics. Patient will continue treatment physical therapy as previously ordered. I will maintain the patient’s light duty work restrictions as before. Follow-up in two weeks.

The petitioner’s work restrictions remained the same. (Petitioner’s Exhibit 4)

The petitioner returned to see Mr. Tennant on November 7, 2022. Under “Diagnosis and Plan”, the following was noted:

Left knee sprain. I will maintain the patient’s light duty work restrictions as before and he should continue treatment with physical therapy as previously ordered. The patient is scheduled for a consultation with Orthopedics this Friday and Dr. Abbott with take over as the physician of record at that time. Further questions are directed to Corporate Health.

The Disability Status Form indicates employee is able to return to previous work restrictions. (Petitioner’s Exhibit 4)

The petitioner was treated by Dr. Jeffery Abbott at the WVU Center for Orthopedics on November 11, 2022. (Petitioner’s Exhibit 7) The chief complaint was left knee pain. The petitioner provided a history of slipping on a wet dock at work. Under “Results; Assessment and Plan”, the following was noted:

Results: Weight-bearing x-rays of the left knee ordered on 11/11/2022 were reviewed show mild degenerative changes. Previous non weight bearing x-rays of the left knee done on 09/10/2022 were reviewed show mild degenerative changes. MRI of the left knee was reviewed shows a medial meniscus tear as well as DJD.

Assessment: Acute medial meniscus tear of left knee. Osteoarthritis of left knee.

Plan: Patient continues to have significant activity limiting pain and is ready to proceed with left knee arthroscopy. Return for two weeks post op.

The petitioner attended his last physical therapy session on November 16, 2022. It was noted he was attending physical therapy for the left knee sprain. It was also noted that he was making minimal progress (Petitioner's Exhibit 6)

Dr. David Soulsby performed a records review on December 23, 2022. (Petitioner's Exhibit 8) Under "Assessment and Discussion", the following was noted:

Assessment: Degenerative tear of the medial meniscus of the left knee. Osteoarthritis of left knee.

Discussion: This petitioner has pre-existing osteoarthritis in the knee. Radiographic findings shortly after the date of injury provide objective evidence to this fact. The question is whether there is a reasonable probability that degenerative osteoarthritis has caused a pre-existing tear of the medial meniscus. The first supportive evidence to the hypothesis that the meniscus tear is pre-existing is the finding in the MRI, namely that the tear of the medial meniscus was degenerative in appearance. I conclude that there is a reasonable probability that the petitioner had pre-existing osteoarthritis and a pre-existing degenerative meniscus tear in his left knee. These conditions are not related to the work incident. It is possible that the incident in question may have caused temporary exacerbation of the pre-existing condition.

By order dated December 28, 2022, the Claims Administrator denied authorization for a left knee arthroscopy. (Petitioner's Exhibit 5) The petitioner protested the order. The petitioner's protest states as follows:

This letter is written in regards to the denial of left knee arthroscopy due to petitioner having DJD. As stated in phone conversation on January 6 the petitioner has DJD, therefore the reason the arthroscopy was denied. The petitioner is seeking arthroscopic surgery for a meniscal tear that occurred during a work related

accident. The finding of DJD is secondary to the meniscal tear. The meniscal tear has caused the petitioner pain and discomfort. I am writing to appeal the denial of the left knee arthroscopic surgery and asking that the surgery be done to alleviate the pain of the meniscal tear. Enclosed is the MRI report.

(Petitioner's Exhibit 12)

The petitioner was treated in the emergency department at Wheeling Hospital on January 8, 2023. The petitioner presented with a chief complaint of injury to the left knee at work. The petitioner noted he had a twisting injury at work and that he had a previous injury in September 2022. An x-ray of the left knee showed mild degenerative arthrosis. The petitioner was diagnosed with a left knee sprain. (Petitioner's Exhibit 3)

The petitioner returned to see Dr. Abbott on January 24, 2023. The history of present illness states:

Patient states that he re injured his left knee at work on 1/8/2023. Patient also states that his left knee has constant pain and increases pain with activity. Patient stated that his left knee has swelling. States that he takes Gabapentin and Voltaren for his left knee pain.

The petitioner was diagnosed with an acute medial meniscus tear of the left knee and osteoarthritis of the left knee. The petitioner's left knee was aspirated and he was provided with a hinged knee brace. The petitioner was given a release to return to work on January 25, 2023, with no restrictions. (Petitioner's Exhibit 7)

The Board of Review affirmed the denial of authorization of surgery in its September 28, 2023, Order. (Petitioner's Exhibit 9) In doing so the Board of Review found as follows:

The issue is whether the petitioner is entitled to the requested medical treatment. The claim administrator must provide medically related and reasonably required medical treatment, health care or healthcare goods and services under W.Va. Code §23-4-3 and 85 CSR 20. In making this determination, the treatment must be for an

injury or disease received in the course of and as a result of employment.

The petitioner sustained a compensable work injury to his left knee on September 5, 2022, when he twisted on a wet dock plate. By claim administrator's order dated October 26, 2022, the claim was held compensable for left knee sprain. On November 11, 2022, Dr. Abbott requested authorization for a left knee arthroscopy. By claim administrator's order dated December 28, 2022, the request for authorization was denied.

Per the medical record of Dr. Abbott dated November 11, 2022, left knee arthroscopy was recommended based upon the assessment of acute medial meniscus tear and osteoarthritis of the left knee. The medical evidence on record does establish a diagnosis of left knee medial meniscus tear. However, the compensable condition of the claim is left knee sprain and per W. Va. C.S.R. § 85-20-43b, surgery is an inappropriate treatment for knee sprain. It is determined that the requested treatment is not medically related and reasonably required for the compensable injury of left knee sprain.

The Intermediate Court of Appeals affirmed the Board of Review in its March 25, 2024, decision. (Petitioner's Exhibit 11) In doing so, the Intermediate Court of Appeals found as follows:

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.

III. SUMMARY OF ARGUMENT

This claim is before this Court pursuant to the petitioner's appeal from the March 25, 2024, decision of the Intermediate Court of Review and subsequent April 25, 2024, Mandate. The decision of the Intermediate Court of Appeals is clearly correct and not in clear violation of constitutional or statutory provision, is not clearly the result of erroneous conclusions of law, and is not based upon the Board's material misstatement or mischaracterization of particular components of the evidentiary record. Rather, the decision of the Intermediate Court of Appeals is

correct and consistent with the evidence of record, the statutes applicable to this claim, and this Court's prior decisions. The Intermediate Court of Appeals properly affirmed the denial of this claim. Therefore, the decision of the Intermediate Court of Appeals should be affirmed.

IV. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

The facts and legal arguments are adequately presented by the employer's brief and record before the Court. Therefore, the employer respectfully submits that oral argument is not needed for this appeal.

V. ARGUMENT

West Virginia Code § 23-5-15(b) provides states that this Court's review of a final Order of the Intermediate Court of Appeals shall consider the record before the Intermediate Court of Appeals and this Court should give deference to the findings, reasoning and conclusions of the, in accordance with the following:

(c) If the decision of the board represents an affirmation of a prior ruling by both the commission and the office of judges that was entered on the same issue in the same claim, the decision of the board may be reversed or modified by the Supreme Court of Appeals only if the decision is in clear violation of constitutional or statutory provision, is clearly the result of erroneous conclusions of law, or is based upon the board's material misstatement or mischaracterization of particular components of the evidentiary record. The court may not conduct a de novo reweighing of the evidentiary record. If the court reverses or modifies a decision of the board pursuant to this subsection, it shall state with specificity the basis for the reversal or modification and the manner in which the decision of the board clearly violated constitutional or statutory provisions, resulted from erroneous conclusions of law, or was based upon the board's material misstatement or mischaracterization of particular components of the evidentiary record.

This Court addressed its standard of review in Moran v. Rosciti Constr. Co., LLC, 240 W. Va. 692, 815 S.E.2d 503, in stating in Syllabus Pt. 1:

When reviewing a decision of the West Virginia Workers' Compensation Board of Review ("the Board"), this Court will give deference to the Board's findings of fact and will review de novo its

legal conclusions. The decision of the Board may be reversed or modified only if it (1) is in clear violation of a constitutional or statutory provision; (2) is clearly the result of erroneous conclusions of law; or (3) is based upon material findings of fact that are clearly wrong.

With due consideration to this standard of review, this Court must affirm the decision of the Intermediate Court of Appeal as the decision is clearly correct and not in clear violation of constitutional or statutory provision; is not clearly the result of erroneous conclusions of law; and is not based upon the Court's material misstatement or mischaracterization of particular components of the evidentiary record.

The petitioner argues that the Intermediate Court of Appeals failed to apply Moore v. ICG Tygart Valley, LLC, 247 W.Va. 292, 879 S.E.2d 779 (2022), due to the fact that the petitioner had not complained of nor been treated for left knee pain and/ or injuries prior to his work injury. As such, the petitioner argues the medial meniscus tear should be compensable and the treatment for the tear, including the arthroscopic surgery should be authorized. By order of the Claims Administrator dated October 26, 2022, the claim accepted as compensable for a diagnosis of a left knee sprain. The petitioner did not protest this order. The petitioner has not requested the medial meniscus tear be added as a compensable condition in the claim. The petitioner has not requested that a pre-existing condition be added as a compensable condition in the claim.

The issue before this Court is not whether the ICA erred in affirming the denial of the petitioner's request to add a pre-existing condition as compensable condition in the claim, as this Court found that it was in Moore. The issue before this Court is whether the denial of authorization for arthroscopic surgery for a non-compensable condition was proper. The ICA found that "considering that the only composable condition in the instant claim is left knee sprain" it "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”. Moreover, the ICA “found no merit” in the claimant’s position that Click v. Arcelormittal U.S., 21-0128 (W.VA. October 18, 2022) should apply here. In Click, the petitioner’s application for benefits had been denied. The denial of the claim was reversed by the Office of Judges. The Office of Judges ordered the claim be held compensable for a knee strain. On appeal, the petitioner argued the Office of Judges should have held the claim compensable for a meniscus tear. This Court stated in its memorandum decision as follows:

The Office of Judges reversed the claims administrator’s rejection of the claim and held the claim the claim compensable for left knee sprain in its August 13, 2020, Order. It found that the medical evidence consistently stated that Mr. Click twisted his left knee while shoveling coal. Mr. Click experienced immediate pain and was transported to the hospital via ambulance. The Office of Judges concluded Mr. Click proved by a preponderance of the evidence that he sustained a discrete new injury in the course of and resulting from his employment. Regarding the compensable condition, the Office of Judges found that Mr. Click was initially diagnosed with a left knee sprain. An MRI was performed, and it revealed a medial meniscus tear, medial meniscus degeneration, posterior cruciate ligament degeneration, and osteoarthritis. The radiologist stated that the findings were all chronic, including the medial meniscus tear. The MRI was reviewed by Dr. Luchs, and he also found that the findings were chronic. The Office of Judges concluded that while Mr. Click may have a meniscus tear in his left knee, such tear was chronic in nature and not the result of the compensable injury. The Office of Judges found that Mr. Click sustained a left knee sprain as a result of the compensable injury and therefore, held the claim compensable only for left knee sprain. The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its Order on January 22, 2021. On appeal, Mr. Click argues that the claim should also be held compensable for left knee meniscus tear. He asserts that prior to the injury, he had no left knee issues or treatment, and he was able to perform all of his job duties without difficulty.

This Court remanded the claim to the Board of Review in order to allow for additional evidence regarding the claimant’s knee condition prior to the injury. The Moore analysis was needed in

Click because the denial of the claim was reversed and the Office of Judges ordered the claim be held compensable for a specific diagnosis of knee sprain, after specifically excluding a pre-existing degenerative condition as compensable. That is not the case here.

Here, the claim was accepted as compensable for a left knee sprain. The petitioner failed to request that the meniscal tear, or any other condition for that matter, be added as a compensable condition in the claim. The findings of the Intermediate Court of Appeals in this regard are clearly correct and not in clear violation of constitutional or statutory provision; is not clearly the result of erroneous conclusions of law; and is not based upon the Court's material misstatement or mischaracterization of particular components of the evidentiary record.

The petitioner's second argument is that the ICA erred to the extent that any weight was given to Dr. Soulsby's opinion that the claimant would have developed symptoms regardless of the work injury. The ICA did address Dr. Soulsby's report in terms of the opinion that the claimant would have developed symptoms in his knee. The ICA merely found that Dr. Soulsby "opined that the tear is not compensable as it is a preexisting degenerative issue". The ICA then went on to properly find that the, "the question of compensability of additional conditions is not at issue in the instant case". The ICA's finding is clearly correct and not in clear violation of constitutional or statutory provision; is not clearly the result of erroneous conclusions of law; and is not based upon the Court's material misstatement or mischaracterization of particular components of the evidentiary record. The question of the compensability of meniscal tear was not at issue and not before the Claims Administrator, the Board of Review, or the ICA. The compensability of the meniscal tear is not at issue before this Court. The only issue is whether the denial of surgery to

treat the non-compensable meniscus tear was proper. The ICA properly determined the denial was proper as the only compensable condition in the claim is left knee sprain.

Finally, the petitioner argues that the surgery should have been authorized because of the “progressive treatment of knee injuries” W.Va. C.S.R. §85-20-43b (Rule 20). The petitioner argues that Dr. Abbottt diagnosed the claimant with an “acute medial meniscus tear of the left knee” that suddenly surgery is denied as being beyond the scope of Rule 20. The petitioner has the burden to establish that the requested arthroscopic surgery was either medically necessary or reasonably required to treat the compensable diagnosis of a left knee sprain. The medical management of claims is governed by West Virginia 85 C.S.R. § 20. Section 20-42 provides the guidelines for treatment of injuries to the knee. Section 42.1 states, in part, as follows:

The vast majority of knee injuries result from direct trauma to the joint or are caused by torsional or angulatory forces. These injuries vary in severity from simple ligamentous strains to complex injuries involving ligamentous disruption with meniscal damage and associated fracture. **This guideline is designed to guide the practitioner in the appropriate management of these injuries and to establish a logical sequence for the diagnostic evaluation and treatment of the more complex injuries.** (Emphasis added)

The claims administrator followed the guidelines in authorizing referrals and diagnostic evaluation of the petitioner’s knee. The treatment guidelines move on to address treatment for knee sprains. These guidelines are found in Section 20-43. Section 20-43b details treatment that is not appropriate for a knee sprain. This section states the following:

b. Inappropriate treatment:

1. Surgery;
2. Inpatient; and
3. Greater than three weeks without consultation.

Petitioner is correct that there can be a progression in treatment that should be considered according to Rule 20. However, that progression stops when the treatment being requesting is for a new diagnosis that is not compensable. In addition, although an initial MRI does not require pre-authorization (See §85-20-9.9(n)), the reality is the medical providers will not perform the MRI without an authorization. Therefore, the Claims Administrator provided the authorization. Moreover, the treatment guidelines the petitioner refers to, in part, § 85-20-44.1, are the guidelines for a meniscal injuries. They do not apply here because the claim is not compensable for a meniscal injury. The claim is compensable for a left knee sprain. The claims administrator is not obligated to authorize treatment for conditions that are not compensable. On appeal, the petitioner is asking this Court not only to order the claims administrator to authorize treatment that is specifically deemed to be inappropriate for a knee sprain, but to also order the authorization of treatment for a noncompensable condition.

VI. CONCLUSION

The decision of the ICA is correct and not in clear violation of constitutional or statutory provision; is not clearly the result of erroneous conclusions of law; and is not based upon the Court's material misstatement or mischaracterization of particular components of the evidentiary record. The ICA correctly determined that the order denying the authorization for the left knee arthroscopy was proper. The petitioner has not shown otherwise. Therefore, the employer respectfully request this Court affirm the March 25, 2024, decision of the Intermediate Court of Appeals.

A handwritten signature in blue ink, reading "Jane Ann Pucane".

Jane Ann Pancake
WV Bar ID# 10743
Jeffrey B. Brannon
WV Bar ID #7838

CERTIFICATE OF SERVICE

I, Jane Ann Pancake, attorney for the Respondent, hereby certify that a true and exact copy of the foregoing Brief on Behalf of Bass Pro Group was served upon Petitioner by forwarding a true and exact copy thereof by electronic service and/or United States Mail, postage prepaid, this 21st day of June 2024, addressed as follows:

Sandra K. Law, Esquire
SCHRADER COMPANION DUFF & LAW, PLLC
401 Main Street
Wheeling, WV 26003



Jane Ann Pancake
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