

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

**KATHY J. NELSON,
Claimant Below, Petitioner**

v.) No. 24-ICA-503 (JCN: 2022023376)

**WAYNE COUNTY BOARD OF EDUCATION,
Employer Below, Respondent**

FILED

September 30, 2025

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

MEMORANDUM DECISION

Petitioner Kathy J. Nelson appeals the November 21, 2024, order of the Workers' Compensation Board of Review ("Board") that affirmed the claim administrator's orders of September 7, 2023, and November 28, 2023. Respondent Wayne County Board of Education ("WCBOE") filed a response.¹ Ms. Nelson did not file a reply. The issue on appeal is whether the Board erred in affirming the claim administrator's orders that denied Ms. Nelson's request to add bilateral pulmonary embolism as a compensable condition to her workers' compensation claim and denied coverage of her hospitalization for the bilateral pulmonary embolism.

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.

The underlying claim arose on May 23, 2022, when Ms. Nelson, then a forty-nine-year-old high school teacher, was lifting a heavy box of books in her classroom and "felt a pop" and severe pain in her right shoulder. She was eventually diagnosed with a full thickness tear of her right rotator cuff and underwent authorized arthroscopic repair surgery on March 16, 2023.

After the shoulder surgery, Ms. Nelson had a period of convalescence during which she says she was sedentary except for when she attended physical therapy. She claimed she remained mostly stationary so that she would not trip or fall and damage her recently

¹ Ms. Nelson is represented by Edwin H. Pancake, Esq. WCBOE is represented by Jeffrey M. Carder, Esq.

repaired rotator cuff. She returned to her orthopedic surgeon, John Jasko, M.D., at Marshall Orthopedics, in Huntington, West Virginia, on April 25, 2023, and complained primarily of soreness but said her pain was well-controlled. Dr. Jasko prescribed additional physical therapy and told her to remain off work.

Sometime thereafter, Ms. Nelson says her left foot and ankle began to swell. She went to the Marshall Orthopedics walk-in clinic on May 11, 2023, complaining of left foot pain and swelling, and reported that her symptoms had started two days earlier, but that she could not recall any direct injury or trauma. She was evaluated by Gregory Hendricks, M.D., who noted that she “report[ed] an ankle sprain over the weekend, but she could not recall whether the injury was to her left or right foot. She felt fine when she went to bed Monday evening but woke up Tuesday morning with pain and swelling in her left foot.” Dr. Hendricks assessed left foot pain with no signs of trauma, injury, gout, or underlying pathology, and noted she “was coming off recent right shoulder surgery,” was taking naproxen, and had no history of blood clots or recent immobilization. He recommended a fracture brace for five to seven days to help rest the tissues for weight-bearing activities.

Ms. Nelson was seen again by Dr. Jasko on June 6, 2023, during which she reported sudden pain in her shoulder during physical therapy. He assessed a likely strain, encouraged continued physical therapy, and said she should return in a month.

On June 26, 2023, she went to the St. Mary’s Medical Center emergency department in Ironton, Ohio, with complaints of left leg pain and swelling after waking up with pain and swelling in her left calf and the back of her left thigh and knee. She stated she had no history of deep vein thrombosis (“DVT”) but had been having left ankle and foot pain for the last month and a half and that she might have had a stress fracture in that part of her foot. An ultrasound revealed extensive left leg DVT and a chest CT showed bilateral pulmonary emboli (“PE”). She was placed on IV heparin and was transported by ambulance to Cabell Huntington Hospital.

On June 27, 2023, Ms. Nelson was evaluated by Maria Tirona, M.D., who noted that Ms. Nelson had been taking oral contraceptives for almost twenty years and had recently been on a long car trip to the beach. Ms. Nelson also reported a family history of thrombosis and stated that her father died from PE, but she denied any personal history of DVT. Dr. Tirona’s notes state that the bilateral PE and DVT were likely provoked, as Ms. Nelson was taking oral contraceptives, had been on the recent long car trip, and had a BMI of thirty-nine. Dr. Tirona advised Ms. Nelson to stop taking oral contraceptives and remain on a heparin drip or Lovenox for forty-eight hours before transitioning to Eliquis. Dr. Tirona also recommended three to six months of anticoagulation medications before reevaluation.

On June 29, 2023, Ms. Nelson underwent an echocardiogram and left leg catheter thrombolysis with IVC filter placement and was admitted to the ICU for observation. On

admission to the ICU, she was started on a heparin drip. On June 30, 2023, she underwent a left leg venogram and central venogram. The studies revealed the clot in her left lower extremity was seventy percent resolved. A repeat ultrasound showed a persistent DVT that would need time to resolve. She was discharged from Cabell Huntington Hospital on July 1, 2023.

On July 18, 2023, Ms. Nelson returned to Dr. Jasko. His notes refer to her recent diagnosis of left lower extremity DVT and PE and that she was scheduled to follow-up with hematology, but do not include an opinion regarding probable etiology or provoking factors.

On August 1, 2023, Muhammad Omer Jamil, M.D., saw Ms. Nelson in follow-up to her discharge for the DVT and PE. His notes state that she reported swelling in her left leg for approximately three months after her right shoulder surgery and that she also had a history of use of oral contraceptives. After Dr. Jamil reviewed Ms. Nelson's medical records, he opined that the provoking factors of her DVT and PE diagnoses were her use of oral contraceptive pills, her recent orthopedic surgery, and travel. He recommended she stay on anticoagulation medication until her IVC filter was removed and return to see him again in three months.

Dr. Jamil completed a Diagnosis Update form dated August 25, 2023, seeking the addition of bilateral PE as an additional compensable diagnosis. Dr. Jamil gave the following description of the clinical findings on which the diagnosis was based and how the present condition related to the compensable condition:

Patient had orthopedic surgery in March 2023. She developed leg swelling following surgery and was found to have DVT in left leg and bilateral pulmonary embolism in June 2023. She had catheter directed thrombolysis in IVC filter placement and remains on Eliquis since. DVT/PE likely developed after orthopedic surgery which is a known risk factor for VTE [venous thromboembolism].

The claim administrator denied the additional diagnosis by order dated September 7, 2023, stating, "the request is denied as medical documentation does not support it was a result of your work injury." Ms. Nelson protested this order. The claim administrator issued a November 28, 2023, order advising that the request for coverage remained denied, referencing a report authored by Syam Stoll, M.D., which included his opinion that the PE was not related to the compensable work injury. Ms. Nelson also protested this order.

Ms. Nelson was deposed on March 20, 2024. She testified regarding her shoulder injury, the March 16, 2023, surgical repair of her torn rotator cuff, and her post-surgical sedentary state. Ms. Nelson testified that she developed swelling and pain in her left lower extremity about three weeks after the shoulder surgery; that she sought treatment from Dr.

Hendricks for those symptoms about six to eight weeks after they began; and she denied that she had sprained her ankle just a couple of days prior to her office visit as his notes stated. Ms. Nelson claimed she only “tweaked” her left ankle approximately two weeks prior to her visit with Dr. Hendricks.

Dr. Stoll reviewed Ms. Nelson’s medical records and deposition transcript and prepared a detailed report of his findings, dated July 25, 2024. The report cited numerous medical studies pertaining to DVT and PE and opined that Ms. Nelson’s DVT and PE diagnoses were not causally related to her right shoulder surgery on March 16, 2023. In support of his opinion, he cited a medical journal article which indicated the incidence of VTE following shoulder arthroscopy was very low at only 0.24%, and that Ms. Nelson’s DVT and PE were likely related to her documented non-compensable medical and non-medical issues including morbid obesity, an independent intervening injury to her left ankle and foot prior to the onset of her symptoms, recent lengthy car travel, decades of use of oral contraceptives, and a family history of DVT and PE. Dr. Stoll also observed that Dr. Jamil’s opinion that Ms. Nelson’s DVT and PE were causally related to her right shoulder surgery seemed to be lacking context from her full medical record. He noted that Dr. Jamil’s diagnosis update stated that Ms. Nelson exhibited leg swelling for three months after her shoulder surgery, but that was not supported by the objective medical documentation as the medical records reveal that on May 11, 2023, she reported a recent ankle sprain to Dr. Hendricks. Dr. Stoll further criticized Dr. Jamil’s failure to acknowledge Ms. Nelson’s family history of VTE and PE and her obesity as risk factors.

Upon review, the Board affirmed the claim administrator’s orders in its November 21, 2024, order, finding that Ms. Nelson failed to prove by a preponderance of evidence that her PE was caused by the authorized medical treatment in the claim. It is from that decision that Ms. Nelson 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, Ms. Nelson argues that she satisfied her burden of proof that her PE should have been added as a secondary compensable condition under her existing claim because Dr. Jamil's Diagnosis Update stated that PE was a known complication of the authorized arthroscopic shoulder surgery. She further argues that Dr. Jamil's opinion should have been afforded a greater weight because he is a board-certified hematologist and is better qualified than Dr. Stoll to render an opinion as to the etiology of her PE diagnosis; and Dr. Jamil's findings, combined with her sedentary post-shoulder surgery lifestyle, establish by a preponderance of the evidence that her PE/DVT developed as a result of the approved treatment in the claim. Moreover, Ms. Nelson asserts that the Board erred in affirming the November 28, 2023, claim administrator's order, on the basis that she is entitled to reasonable and necessary medical treatment as a result of the PE. We disagree.

The same criteria used to prove that a compensable injury occurred must also be shown to establish the compensability of a secondary condition: (1) a personal injury, (2) received in the course of employment, and (3) resulting from that employment. *Barnett v. State Workmen's Comp. Comm'r*, 153 W. Va. 796, 172 S.E.2d 698 (1970); *Jordan v. State Workmen's Comp. Comm'r*, 156 W. Va. 159, 191 S.E.2d 497 (1972). 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 §§ 85-20-1 through -70 (2006).

Here, the Board determined that the weight of the evidence established that Ms. Nelson's PE was not caused by the authorized medical treatment in this claim. First, the Board stated that Dr. Jamil failed to provide sufficient evidentiary support for the request to add PE to the claim. In support of the Diagnosis Update request, Dr. Jamil stated that Ms. Nelson developed the PE after her shoulder surgery, and that orthopedic surgery is a known risk factor for developing PE. However, the Board noted that Dr. Jamil's office notes acknowledge that Ms. Nelson had multiple non-compensable risk factors for developing PE, including her use of oral contraceptives and the recent long car trip, which were consistent with the conclusions of her other treating physicians and Dr. Stoll, all of whom pointed to a non-compensable etiology for the PE.

Furthermore, after her PE diagnosis, Ms. Nelson was evaluated by Dr. Tirona, Dr. Abdul Muhsen Abdeen, Dr. Jamil, and Dr. Jasko and, of the four physicians, only Dr. Jamil attributed her PE to the shoulder surgery. However, both Dr. Tirona and Dr. Stoll opined

that Ms. Nelson’s long-term use of oral contraceptives, recent ten-hour car trip, and obesity were provoking factors of the PE, and therefore, the Board found that Dr. Jamil’s opinion was not persuasive and not supported by the weight of the medical evidence of record. We defer to the Board’s determinations of credibility and weighing of the evidence. *See Martin v. Randolph Cnty. Bd. of Educ.*, 195 W. Va. 297, 306, 465 S.E.2d 399, 408 (1995) (“We cannot overlook the role that credibility places in factual determinations, a matter reserved exclusively for the trier of fact. We must defer to the ALJ’s credibility determinations and inferences from the evidence.”).

Additionally, the Board found that Dr. Stoll opined that the available medical research establishes that the incidence of a PE following right shoulder arthroscopy is extremely rare, and Ms. Nelson presented no evidence to refute Dr. Stoll’s finding on that point. Accordingly, the Board found that, based on the evidence of record, Drs. Tirona, Abdeen, and Stoll indicated that the PE was most likely due to non-compensable factors, and Dr. Jamil’s opinion of a causal relationship was inconsistent with the weight of the medical evidence.

Finally, the Board found that because the PE was not a compensable condition, any related medical treatment could not be considered medically necessary or reasonably required. If the preponderance of the evidence failed to establish that the PE was caused by the compensable surgery, then it follows that the treatment and hospitalization for the PE are not covered under the claim.

We do not find that the Board erred in affirming the September 7, 2023, and November 28, 2023, orders of the claim administrator. The Board’s order is supported by substantial evidence. As set forth by the Supreme Court of Appeals of West Virginia, “[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 orders, which denied the additional diagnosis and denied authorization for medical treatment.

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

Affirmed.

ISSUED: September 30, 2025

CONCURRED IN BY:

Chief Judge Charles O. Lorensen

Judge Daniel W. Greear

Judge S. Ryan White