

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

**J.K.,
Claimant Below, Petitioner**

v.) No. 25-ICA-110 (JCN: 2024015115)

**MARSHALL COUNTY COAL RESOURCES,
Employer Below, Respondent**

**FILED
September 30, 2025**

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

MEMORANDUM DECISION

Petitioner J.K.¹ appeals the February 14, 2025, order of the Workers' Compensation Board of Review ("Board"). Respondent Marshall County Coal Resources ("MCCR") filed a response.² J.K. filed a reply. The issue on appeal is whether the Board erred in affirming the claim administrator's order, which denied the addition of post-traumatic stress disorder ("PTSD"), pain disorder with agoraphobia, and major depressive disorder to the claim as compensable conditions.

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 February 22, 2024, while employed by MCCR, J.K. sustained an injury to his head when a concrete block wall that he was building fell, and a block struck him in the head and knocked him off a four-foot ladder. J.K. was transported to Reynolds Memorial Hospital by ambulance. J.K. denied loss of consciousness, denied neck or back pain, and denied any other injury. A cervical CT scan revealed moderately advanced C5-C6 degenerative disc disease, but no active cervical fracture. The assessment was closed head injury and dental abscess.

¹ We use initials to identify the petitioner because of our reference to sensitive medical information. *See* W. Va. R. App. Pro. 40(e)(4).

² J.K. is represented by Sandra K. Law, Esq. MCCR is represented by Aimee M. Stern, Esq.

J.K. completed an Employees' and Physicians' Report of Occupational Injury or Disease dated February 22, 2024, indicating that he suffered a head injury. Richard Houck, D.O., of Reynolds Memorial Hospital, completed the physician's section of the application and diagnosed a head injury. On February 26, 2024, J.K. was seen by Erona Reza, M.D., and Brandon Glover, M.D. Drs. Reza and Glover noted that J.K. reported that he experienced constant headaches since February 22, 2024, and bruising on his ribs, making it difficult to breathe. The assessment was a head injury due to trauma and concussion.

On February 27, 2024, J.K. began treatment with Marcus Cervantes, M.D. J.K. complained of constant headaches, intermittent dizziness, and twitching in his right eye. Dr. Cervantes noted a linear abrasion, approximately three inches long, to the left temple and mild edema. Dr. Cervantes indicated that J.K. had a normal range of motion of his neck with no rigidity or tenderness. The assessment was a head injury due to trauma.

On March 1, 2024, J.K. was seen by Aaron Monseau, M.D., who diagnosed a concussion. J.K. reported that he continued to have significant headaches. Dr. Monseau recommended a neurology referral. The claim administrator issued an order dated March 5, 2024, holding the claim compensable for a concussion without loss of consciousness.

J.K. followed up with Dr. Cervantes on March 12, 2024. J.K. reported no improvement since the last evaluation with the concussion clinic. He diagnosed concussion without loss of consciousness and referred J.K. to physical therapy. Dr. Cervantes completed an Attending Physician's Report dated March 18, 2024, indicating that J.K. was unable to return to full duty work.

On March 18, 2024, J.K. began treatment with Michael Ebbert, D.O., a neurologist. Dr. Ebbert assessed concussion without loss of consciousness, cervical strain, occipital neuritis, imbalance, convergence insufficiency, and post-traumatic headache. He referred J.K. to physical therapy and occupational therapy. On March 20, 2024, a physical therapy evaluation was completed by Teresa Rice, PT. Ms. Rice reported that J.K. complained of dizziness, imbalance, headaches, anxiety, and difficulty sleeping. Ms. Rice recommended physical therapy for vestibular rehabilitation and medical management of his anxiety and sleep. On March 28, 2024, Dr. Cervantes noted that J.K. did not think he could return to work safely and that balance impairment is his biggest issue. Dr. Cervantes diagnosed concussion without loss of consciousness, traumatic injury of the head, and strain of the neck.

From April 5, 2024, through August 6, 2024, J.K. underwent physical therapy at Healthworks Rehab and Fitness. The recommendations included skilled intervention to decrease pain, improve balance, improve function, improve motor control, increase range of motion, and increase strength. On May 21, 2024, J.K. reported that he continued to

experience constant headaches and tightness in his neck. J.K. was instructed to continue with rehabilitative therapy two times per week for an additional four weeks.

On April 15, 2024, Dr. Ebbert stated that J.K. had anxiety and panic attacks. On April 18, 2024, Dr. Cervantes expressed concern regarding J.K.'s balance issues. On April 25, 2024, J.K. underwent a cervical MRI revealing degenerative spondylosis of the cervical spine, most notably at C5-C6, where there was moderate to severe bilateral neural foraminal stenosis. On April 29, 2024, Dr. Cervantes opined that an MRI was consistent with degenerative changes with no acute findings attributable to head injury. On May 6, 2024, and May 30, 2024, Dr. Ebbert stated that he suspected that the concussive injury was still playing a minor role in J.K.'s symptoms.

From May 30, 2024, through October 3, 2024, J.K. was treated by John Spraggins, MSW, LCSW, Emeritus. Mr. Spraggins diagnosed PTSD, panic disorder with agoraphobia, major depressive disorder, and chronic pain from a recent concussive injury. Mr. Spraggins noted that J.K.'s symptoms began following the work accident.

On June 6, 2024, Dr. Cervantes noted that J.K. reported he underwent a psychiatric evaluation, and that the evaluator thought J.K. has PTSD. Dr. Cervantes noted that J.K. had been off work for quite some time without improvement in symptoms and had deteriorated psychiatrically. On June 20, 2024, Dr. Ebbert opined that J.K.'s concussive injury was no longer playing a role in his symptoms, but that J.K. had persistent symptoms related to other areas of dysfunction from the injury. Dr. Ebbert opined that J.K. would benefit from continued physical therapy and occupational therapy. On June 24, 2024, J.K., by counsel via an email to the claim administrator, requested that PTSD, panic disorder with agoraphobia, and major depressive disorder be added to the claim as compensable diagnoses. Counsel supported her request with medical records that included those from Mr. Spraggins, who opined that J.K. should stay off work due to his physical and emotional difficulties, and the records of Dr. Ebbert, who diagnosed anxiety and recommended therapy.

Gerald Steiman, M.D., a neurologist, completed an independent medical evaluation of J.K. dated July 24, 2024. Dr. Steiman concluded that J.K. had reached maximum medical improvement for the allowed condition of concussion without loss of consciousness. With regard to J.K.'s ongoing neck pain, Dr. Steiman opined that even a severe cervical sprain/strain should resolve in three to six months. Dr. Steiman noted that a cervical MRI demonstrated multi-level degenerative joint and disc disease. Dr. Steiman opined that the totality of J.K.'s current symptom complex bore no relationship to the diagnosis of concussion without loss of consciousness, and that J.K.'s continued and ongoing symptomatology could not be explained by a single and isolated concussion.

On July 31, 2024, the claim administrator issued an order denying the addition of PTSD, pain disorder with agoraphobia, and major depressive disorder to the claim as compensable conditions. J.K. protested this order. On August 7, 2024, Dr. Cervantes noted that J.K. reported that he could not return to work with his current symptoms. Dr. Cervantes indicated that a Functional Capacity Evaluation should be considered.

A PSIMed Treatment Summary report dated September 10, 2024, indicated that J.K. attended bi-weekly therapy sessions from August 1, 2024, through October 9, 2024, with Kimberly Hotlosz, LPC. Ms. Hotlosz stated that the work accident left J.K. with significant symptoms of trauma. The assessment was PTSD, severe recurrent major depression, and panic disorder with agoraphobia.

J.K. was deposed on November 13, 2024, and testified that on February 22, 2024, he was on a ladder about two feet off the ground when he got hit in the head with a concrete block and was knocked off the ladder, causing a three-inch gash on his temple. J.K. testified that he was transported by ambulance to Reynolds Memorial Hospital. He stated that he returned to work the following Monday. J.K. testified that he had headaches, neck stiffness and pain, dizziness, nightmares about the accident, flashbacks, anxiety, claustrophobia, and balance issues following the injury. He denied having any prior problems with his neck or headaches. J.K. stated that he received treatment for anxiety in the past, but it was well managed, and his physician took him off anxiety medication in 2023.

On February 14, 2025, the Board affirmed the claim administrator's order, which denied the addition of PTSD, pain disorder with agoraphobia, and major depressive disorder to the claim as compensable conditions. The Board found that J.K. did not comply with the requirements of West Virginia Code of State Rules § 85-20-12.4 ("Rule 20") for the requested psychiatric diagnoses. J.K. 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.

Syl. Pt. 2, *Duff v. Kanawha Cnty. Comm'n*, 250 W. Va. 510, 905 S.E.2d 528 (2024).

J.K. argues that the Board was clearly wrong in denying the addition of secondary psychiatric conditions due to the request coming from his counsel rather than his physician. J.K. further argues that his request complies with the requirements of Rule 20.

Three elements must coexist in workers' compensation cases to establish compensability: (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); *Sansom v. Workers' Comp. Comm'r*, 176 W. Va. 545, 346 S.E.2d 63 (1986).

W. Va. Code R. § 85-20-12.4 provides as follows:

Compensability: Services may be approved to treat psychiatric problems only if they are a direct result of a compensable injury. As a prerequisite to coverage, the treating physician of record must send the injured worker for a consultation with a psychiatrist who shall examine the injured worker to determine 1) if a psychiatric problem exists; 2) whether the problem is directly related to the compensable conditions; and 3) if so, the specific facts, circumstances and other authorities relied upon to determine the causal relationship. The psychiatrist shall provide this information, and all other information required in section 8.1 of this Rule in his or her report. Failure to provide this information shall result in the denial of the additional psychiatric diagnosis. Based on that report, the Commission, Insurance Commissioner, private carrier or self-insured employer, whichever is applicable, will make a determination, in its sole discretion, whether the psychiatric condition is a consequence that flows directly from the compensable injury.

a. A diagnosis update form WC-214 must be attached to the treating physician's report in order to request the psychiatric condition be added as an approved diagnosis.

The Supreme Court of Appeals of West Virginia has held that a claimant must be evaluated by a psychiatrist in order for psychiatric conditions to be held compensable. *See Hale v. W. Va. Offices of the Ins. Comm'r*, 228 W. Va. 781, 724 S.E.2d 752 (2012), and

Travers v. Blackhawk Mining, LLC, No. 23-173, 2024 WL 3726275 (W. Va. Aug. 7, 2024) (memorandum decision).

Upon review, we conclude that the Board was not clearly wrong in finding that J.K. failed to establish his psychiatric conditions under the requirements of Rule 20. However, we note that the Board incorrectly found that J.K. failed to comply with Rule 12.4 due to the fact that the request to add psychiatric conditions came from his counsel rather than the medical provider. *See Huntington Alloys v. Cassady*, 16-0568, 2017 WL 1788940, at *3 (W. Va. May 5, 2017) (memorandum decision); *Gasvoda v. Murray American Energy, Inc.*, 22-ICA-108, 2023 WL 1463708, at *5 (W. Va. Ct. App. Feb. 2, 2023) (memorandum decision), *aff'd*, No. 23-143, 2024 WL 3982704 (W. Va. Aug. 27, 2024) (memorandum decision). Although the Board was wrong on this point, we affirm because J.K. failed to comply with the requirement in Rule 20 that a psychiatrist evaluate him and provide a detailed report that must include findings about whether there is a psychiatric diagnosis, and if so, whether it is causally related to the compensable conditions, and state a basis for the findings.³ We note that the evaluation cited by J.K. as evidence of his psychiatric conditions was by Mr. Spraggins, who is not a psychiatrist. He is a social worker. J.K. also submitted evidence from Kimberly Hotlosz. However, she is also not a psychiatrist. According to Ms. Hotlosz's credentials, she is a licensed professional counselor. Further, we note that it does not appear from the record that J.K. has at any point been evaluated by a psychiatrist related to this claim. Thus, we conclude that J.K. failed to establish his psychiatric conditions under the requirements of Rule 20.

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.

Accordingly, we affirm the Board’s February 14, 2025, order.

Affirmed.

³ The order below broadly states “Counsel argues that Rule 20 sets forth clear evidentiary prerequisites which must be met before a psychiatric diagnosis can be added as a compensable component, and none of the required documentation had been provided by the claimant.” We interpret this broadly and find Respondent argued that Petitioner failed to submit a proper psychiatric report below.

ISSUED: September 30, 2025

CONCURRED IN BY:

Chief Judge Charles O. Lorensen

Judge Daniel W. Greear

Judge S. Ryan White