

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

CONSTELLIUM US HOLDINGS I, LLC,
Employer Below, Petitioner

v.) No. 25-ICA-112 (JCN: 2023015690)

MICHAEL D. FERRELL,
Claimant Below, Respondent

FILED
September 30, 2025

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

MEMORANDUM DECISION

Petitioner Constellium US Holdings I, LLC, (“Constellium”) appeals the February 26, 2025, order of the Workers’ Compensation Board of Review (“Board”). Respondent Michael D. Ferrell filed a response.¹ Constellium did not reply. The issue on appeal is whether the Board erred in reversing the claim administrator’s order, which rejected the claim.

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.

Mr. Ferrell submitted an Employees’ and Physicians’ Report of Occupational Injury or Disease dated February 9, 2023, indicating that he sustained an injury to his upper and lower back on February 7, 2023, while bent over and cutting filters. Per the physician’s section, Mr. Ferrell sustained an injury to his low back as a direct result of an occupational injury. The physician reported that the condition aggravated the prior injury/disease of a lumbar strain from 2010. On February 7, 2023, Mr. Ferrell was seen by Christopher Wilcoxon, D.C., for left sacroiliac and right sacroiliac dull and aching discomfort. The assessment was a sprain of the lumbar ligaments.²

¹ Constellium is represented by James W. Heslep, Esq. Mr. Ferrell is represented by Edwin H. Pancake, Esq.

² Mr. Ferrell was seen by Dr. Wilcoxon several times between February 7, 2023, and March 26, 2024; all visit notes indicate that his lumbar complaints persisted but that he showed some improvement.

On February 9, 2023, Mr. Ferrell presented to Everside Health with lower and upper back pain. Mr. Ferrell reported that on February 7, 2023, he was on his knees leaning forward to cut some filters when he felt a pop in his lower back. Mr. Ferrell further reported a prior history of back strain in 2010. The assessment was a strain of the lumbar region. Mr. Ferrell was also seen on February 9, 2023, by Benjamin O’Kelly, D.O., at Holzer Clinic and reported lower back pain beginning three days prior after bending over. The assessment was strain of fascia of lower back. On February 14, 2023, Mr. Ferrell returned to Everside Health. The assessment was strain of muscle, fascia, and tendon of the lower back.

Mr. Ferrell followed up at Holzer Clinic with Jeffrey Kim, M.D., on April 4, 2023. Mr. Ferrell reported left back pain and left hip pain that began after an incident at work on February 7, 2023. X-rays of the lumbar spine revealed multilevel degenerative changes with lower lumbar facet arthropathy. An MRI of the lumbar spine revealed multilevel degenerative changes with disc bulges at L4-L5, a left paracentral disc protrusion at L5-S1 with moderate left-sided lateral recess narrowing, and no significant central stenosis. The radiologist assessed degeneration of the lumbar intervertebral disc. The claim administrator issued an order dated June 28, 2023, rejecting the claim. Mr. Ferrell protested this order.

Mr. Ferrell was deposed on March 5, 2024. Mr. Ferrell testified that on February 7, 2023, he was at work, kneeling to cut some filters when he lost his balance, tried to catch himself from falling into a dumpster, and he felt a pop in his back. Mr. Ferrell further testified that he sought medical treatment about an hour or so after the injury. Mr. Ferrell stated that he had a prior low back injury in 2007 or 2008 and that his symptoms had resolved after three chiropractic visits. Mr. Ferrell testified that after the prior low back injury, he had no symptoms and continued to work full duty.

On February 26, 2025, the Board reversed the claim administrator’s order, which rejected the claim. The Board found that Mr. Ferrell established by a preponderance of the evidence that he sustained an injury in the course of and resulting from his employment. Constellium 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).

Constellium argues that the evidence of record clearly indicates that Mr. Ferrell has a history of low back pain. Further, Constellium argues the notes from Everside Health from February 9, 2023, state that the claimant felt a pop in his tailbone that day, not on February 7, 2023. Finally, Constellium argues that Dr. Wilcoxon and the provider at Holzer both failed to fill out a report of injury. We disagree.

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).

The Supreme Court of Appeals of West Virginia held in Syllabus Point 5, *Moore v. ICG Tygart Valley, LLC*, 247 W. Va. 292, 879 S.E.2d 779 (2022), that:

A claimant's disability will be presumed to have resulted from the compensable injury if: (1) before the injury, the claimant's preexisting disease or condition was asymptomatic, and (2) following the injury, the symptoms of the disabling disease or condition appeared and continuously manifested themselves afterwards. There still must be sufficient medical evidence to show a causal relationship between the compensable injury and the disability, or the nature of the accident, combined with the other facts of the case, raises a natural inference of causation. This presumption is not conclusive; it may be rebutted by the employer.

Here, the Board found that the evidence established that while performing his work duties of cutting filters on February 7, 2023, Mr. Ferrell was in a kneeling position and lost his balance. When Mr. Ferrell tried to catch himself, he felt a pop in his low back. Further, the Board noted that no medical records from prior to the compensable injury had been submitted into the record. The Board further noted Mr. Ferrell's un rebutted testimony that he only had three chiropractic visits following his low back injury from 2007 or 2008, had no ongoing symptoms, and continued to work full time. Thus, the Board found that

Constellium failed to rebut the presumption set forth in *Moore*. As a result, the Board found that the medical evidence established a diagnosis of lumbar strain that Mr. Ferrell sustained as a direct result of an occupational injury.

We find no merit in Constellium's argument that the notes from Everside Health identify the date of injury as February 9, 2023. Upon review, the notes in question do indicate that the date of injury was February 7, 2023, and the date of injury listed at the top of the page appears to be a clerical error. Further we find no merit in Constellium's argument that Dr. Wilcoxon and the provider from Holzer each failed to complete a report of injury. A sufficient report of injury was completed at Everside Health, and it is unnecessary for each provider to complete a duplicate report of injury.

Upon review, we conclude that the Board was not clearly wrong in finding that Mr. Ferrell established by a preponderance of the evidence that he suffered an injury in the course of and resulting from his employment. 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 reversing the claim administrator's order.

Accordingly, we affirm the Board's February 26, 2025, order.

Affirmed.

ISSUED: September 30, 2025

CONCURRED IN BY:

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