

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

JOHN MOORE,
Claimant Below, Petitioner

v.) No. 25-ICA-137 (JCN: 2024013637)

UNITED COAL COMPANY, LLC,
Employer Below, Respondent

FILED
September 30, 2025
ASHLEY N. DEEM, CHIEF DEPUTY CLERK
INTERMEDIATE COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner John Moore appeals the March 7, 2025, order of the Workers' Compensation Board of Review ("Board"). Respondent United Coal Company, LLC ("United") timely filed a response.¹ Mr. Moore did not reply. The issue on appeal is whether the Board erred in affirming 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. Moore was seen by Amanda Davis, PA-C at New River Health Fayetteville on December 6, 2021. PA-C Davis noted that Mr. Moore's A1c was elevated, that Mr. Moore admitted he had not been watching his diet and had gained a considerable amount of weight, and that he had not used his glucometer for a year or two. The diagnoses were vitamin D deficiency and type 2 diabetes mellitus without complication.

Mr. Moore, an underground coal miner, completed an Employees' and Physicians' Report of Occupational Injury or Disease form dated December 12, 2023. Mr. Moore indicated that he sustained an injury to his hands and wrists while working in the coal mines for years using high-impact and vibrating tools. The date of last exposure was listed as March 20, 2013. The physicians' portion of the form was signed by Michael Kominsky, D.C., and lists the diagnosis as bilateral median nerve compression of the wrists.

¹ Mr. Moore is represented by Reginald D. Henry, Esq., and Lori J. Withrow, Esq. United is represented by H. Dill Battle III, Esq.

On December 12, 2023, Dr. Kominsky performed an EMG/NCS and reported that the study was abnormal with electrophysiological evidence of median nerve neuropathy of the right and left wrists affecting sensory fibers and motor fibers, consistent with bilateral carpal tunnel syndrome (“CTS”). There was no evidence of an acute nerve lesion. Dr. Kominsky assessed occupation-related bilateral median nerve neuropathy at the wrists and occupational bilateral CTS. Dr. Kominsky opined that Mr. Moore’s occupational environment is directly responsible for and related to these conditions, specifically his use of numerous high-impact tools such as wrenches, rock drills, impact hammers, and hydraulic drills. In addition, Dr. Kominsky indicated that Mr. Moore frequently used a sledgehammer, which has caused extensive damage to the median nerve at the wrist producing the symptoms of numbness, tingling, and weakness that began over the years of Mr. Moore’s employment and progressively worsened.

Mr. Moore completed a CTS Claimant Questionnaire dated February 1, 2024. Mr. Moore stated that his job title was mine foreman, scoop man, and night move crew. Mr. Moore indicated that he experienced pain, tingling, numbness, fatigue, loss of coordination, and difficulty opening or closing his hand. Mr. Moore stated that he had high blood pressure, but he did not respond to the question regarding whether he had diabetes. Regarding his job duties, Mr. Moore indicated that he used a hammer, screwdriver, jack hammer, and drill.

On February 26, 2024, the claim administrator rejected the claim, on the basis that the preponderance of the medical evidence does not support work-related CTS. Mr. Moore protested this order to the Board.

On September 11, 2024, Mr. Moore was deposed regarding his claim. Mr. Moore testified that he started working for United in 2011, and that he worked there until March 20, 2013. Mr. Moore testified that he used his hands, wrists, and fingers in a forceful and repetitive manner while working for United, and that he began to notice symptoms in his last few years of working as a coal miner. Mr. Moore testified that from approximately 2004 to 2010, he worked for an employment contracting company where he worked temporary jobs at a number of mine sites, and that he used tools such as impact wrenches, jackhammers, and hydraulic drills.

Austin Nabet, D.O., performed an independent medical evaluation of Mr. Moore on November 15, 2024. Dr. Nabet noted that Mr. Moore worked at United for two years and last worked on March 20, 2013. Mr. Moore denied performing any one task on a repetitive basis for a continuous amount of time up to twenty hours per week. Dr. Nabet opined that Mr. Moore’s diagnosis of bilateral CTS is not due to occupational exposure at United. Instead, Dr. Nabet stated that he would strongly correlate Mr. Moore’s diagnosis of bilateral CTS to his poorly controlled diabetes with a hemoglobin A1c of 8.1. He further noted that diabetes is one of the strongest risk factors for the development of CTS.

On March 7, 2025, the Board affirmed the claim administrator's order rejecting the claim. The Board found that Mr. Moore did not establish by a preponderance of the evidence that he developed bilateral CTS in the course of and resulting from his employment. It is from this order that Mr. Moore 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, Mr. Moore argues that the Board decision is clearly wrong because the preponderance of the evidence establishes that he sustained CTS in the course of and resulting from his employment. Mr. Moore also asserts that the Board erred in disregarding Dr. Kominsky's report simply because Dr. Nabet discussed his diabetes.

In order for a workers' compensation claim to be held compensable, three elements must coexist: (1) a personal injury, (2) received in the course of employment, and (3) resulting from that employment. Syl. Pt. 1, *Barnett v. State Workmens' Comp. Comm'r*, 153 W. Va. 796, 172 S.E.2d 698 (1970). Also, "[i]n determining whether an injury resulted from a claimant's employment, a causal connection between the injury and employment must be shown to have existed." Syl. Pt. 3, *Emmel v. State Comp. Dir.*, 150 W. Va. 277, 145 S.E.2d 29 (1965).

Further, West Virginia Code § 23-4-1(f) provides, in part:

a disease is considered to have been incurred in the course of, or to have resulted from, the employment only if it is apparent to the rational mind, upon

consideration of all the circumstances: (1) that there is a direct causal connection between the conditions under which work is performed and the occupational disease; (2) that it can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of employment; (3) that it can be fairly traced to the employment as the proximate cause; (4) that it does not come from a hazard to which workmen would have been equally exposed outside of the employment; (5) that it is incidental to the character of the business and not independent of the relation of the employer and employee; and (6) that it appears to have had its origin in a risk connected with the employment and to have flowed from that source as a natural consequence, though it need not have been foreseen or expected before its contraction.

Here, the Board concluded that Mr. Moore did not establish by a preponderance of the evidence that he developed bilateral CTS in the course of and resulting from his employment with United. The Board found that Dr. Nabet's report, which attributed Mr. Moore's CTS to diabetes, was persuasive.² The Board weighed the factors set forth in West Virginia Code § 23-4-1(f) and found that considering the ten years between Mr. Moore's last date of employment with United and his diagnosis of CTS, his worsening diabetes, and Dr. Nabet's report which attributed Mr. Moore's CTS to his diabetes, the record does not establish that there is a direct causal connection between Mr. Moore's employment with United and his CTS. Mr. Moore argues that the Board failed to properly consider his testimony and statements to Dr. Kominsky that he developed symptoms during his last two or three years of employment and that Dr. Nabet erroneously found that the symptoms developed along with the diabetes. However, we note that the Board pointed out that Mr. Moore's symptoms progressed over ten years following the date he was last exposed to the hazard of CTS.

Although Mr. Moore argues that the Board erred in disregarding Dr. Kominsky's report, the Board specifically found that Dr. Kominsky did not consider Mr. Moore's diabetes. On the other hand, the Board found that Dr. Nabet's report addresses the significance of Mr. Moore's diabetes as documented in the medical records and is more complete in addressing compensability. We defer to the Board's credibility determinations 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. . . .").

² We note that The Treatment Guidelines for Carpal Tunnel Syndrome, found in West Virginia Code of State Rules § 85-20-41.4, provide, in part "[m]edical conditions frequently produce or contribute to CTS. Recognition of these conditions is important for good outcomes. Diabetes mellitus. . . and other conditions can precipitate CTS symptoms."

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 order, which rejected the claim.

Accordingly, we affirm the Board’s March 7, 2025, order.

Affirmed.

ISSUED: September 30, 2025

CONCURRED IN BY:

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