

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

**B.M.,
Claimant Below, Petitioner**

v.) No. 25-ICA-26 (JCN: 2021014061)

**MINGO LOGAN COAL COMPANY,
Employer Below, Respondent**

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

MEMORANDUM DECISION

Petitioner B.M.¹ appeals the January 15, 2025, order of the Workers' Compensation Board of Review ("Board"). Respondent Mingo Logan Coal Company ("Mingo Logan") timely filed a response.² B.M. did not file a reply. The issue on appeal is whether the Board erred in affirming the claim administrator's order, which denied a request to add post-traumatic stress disorder ("PTSD") and major depressive disorder as compensable conditions in 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 that there is error in the Board's decision but no substantial question of law. This case satisfies the "limited circumstances" requirement of Rule 21(d) of the Rules of Appellate Procedure for reversal in a memorandum decision. For the reasons set forth below, the Board's decision is vacated and remanded for further proceedings consistent with this decision.

B.M. suffered a compensable injury on January 13, 2021, when 900 pounds of material fell on him while he was working as a coal miner for Mingo Logan.

On December 1, 2021, B.M. was seen by Kiera Krivchenia, BA, for an intake session at Mountain Comprehensive Care Center. B.M. reported that he needed someone to talk to, and that his doctor wanted him to be seen by a psychiatrist. B.M. reported that

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 B.M. is represented by William B. Gerwig, III, Esq. Mingo Logan is represented by Jeffrey B. Brannon, Esq.

he has flashbacks of the accident, he avoids thinking about the mines, he is claustrophobic and has issues with memory and concentration. A provider at Mountain Comprehensive Care Center diagnosed B.M. with PTSD, and assigned William Crum, MHA, to be his care provider. B.M. was seen by Mr. Crum on December 21, 2021, for a counseling session. Mr. Crum reported that B.M. presented with depressed mood, and that his anxiety had not improved. The diagnosis was generalized anxiety disorder. On January 5, 2022, Mr. Crum conducted a telehealth therapy session with B.M., who reported that his anxiety was sometimes worse than others. The assessment was generalized anxiety disorder. On January 31, 2022, B.M. was again seen by Mr. Crum and diagnosed with major depression and PTSD.

On February 8, 2022, B.M. underwent a psychiatric evaluation by Courtney Turner, M.D, a psychiatrist at Mountain Comprehensive Care Center. Dr. Turner noted that B.M. exhibited symptoms of major depressive disorder and PTSD. She indicated that B.M. was well-engaged in psychotherapy, which would likely be of the most significant benefit. On February 21, 2022, B.M. returned to therapy with Mr. Crum. The diagnoses were major depressive disorder and PTSD. B.M. followed up with Mr. Crum on March 21, 2022, and the diagnoses remained the same. On April 5, 2022, B.M. followed up with Dr. Turner for an additional psychiatric evaluation. The diagnosis was major depression. Dr. Turner noted that B.M. had good control of his symptoms on his current regimen and would continue psychotherapy.

Between February 22, 2022, and December 19, 2022, B.M. engaged in psychotherapy with Mr. Crum for the diagnoses of major depression and PTSD. At the December visit, B.M. reported that his stress was not too bad, and the medication was helping, but that he was still experiencing nightmares about the accident. Periodically, B.M. would follow up with Dr. Turner for a psychiatric evaluation. At the visits on April 5, 2022, October 25, 2022, and November 22, 2022, Dr. Turner instructed B.M. to continue with psychotherapy and the medication that she prescribed.

On January 24, 2023, B.M. followed up with Dr. Turner. He reported that his anxiety varied from day to day, and that he was experiencing restless nights and nightmares. He believed that his medication was helpful. The diagnoses were generalized anxiety disorder, major depression, and PTSD. On April 25, 2023, and May 23, 2023, B.M. returned to Dr. Turner for follow up visits. He characterized his mood as “on edge” and reported poor sleep due to pain and anxiety. Dr. Turner assessed major depression and instructed B.M. to continue with medication and psychotherapy.

On October 25, 2023, B.M. was evaluated by Drew Barzman, M.D., a psychiatrist via a Zoom call. B.M. reported that the coal mine accident occurred on January 13, 2021, when 900 pounds fell on top of him, which covered everything except for his neck and head. B.M. reported that he was in multiple organ failure and was hospitalized for one week. B.M. indicated that the following symptoms bothered him moderately: repeated

disturbing dreams of the event; feeling very upset when reminded of the stressful experience; suddenly feeling as if the experience was happening again; feeling very upset when reminded of the stressful experience; avoiding external reminders of the event; feeling distant or cut off from other people; irritable behavior, angry outbursts or acting aggressively; being “superalert or on guard”; and feeling jumpy or easily startled. B.M. indicated that the following symptoms bothered him quite a bit: repeated disturbing and unwanted memories of the stressful experience; loss of interest in activities he used to enjoy; difficulty concentrating; and trouble falling or staying asleep. Dr. Barzman opined to a reasonable degree of medical certainty that B.M. had developed PTSD as a result of the occupational injury of January 13, 2021. Dr. Barzman’s report made no mention of major depressive disorder.

Toni Goodykoontz, M.D., J.D., a board-certified psychiatrist, reviewed records for B.M. and issued a psychiatric expert witness report dated December 10, 2013. Dr. Goodykoontz concluded that the records from Mountain Comprehensive Care Center do not support a diagnosis of major depression, PTSD, or anxiety. Dr. Goodykoontz opined that Ms. Krivchenia, with a bachelor’s level degree, does not have the training/credentials, licensing, or experience to provide a diagnosis of PTSD, and that there is no explanation as to the basis of the diagnosis in terms of symptomology or method. Further, Dr. Goodykoontz indicated that all of B.M.’s sessions with William Crum, MHA, took place over the phone. Dr. Goodykoontz noted that B.M.’s symptoms of nightmares and PTSD were not unexpected, but that nightmares are not a sufficient basis for a diagnosis of PTSD. Further, Dr. Goodykoontz opined that B.M. has never had an abnormal mental status examination. Moreover, Dr. Goodykoontz stated that B.M.’s description of his thoughts and behaviors during the questioning by Dr. Barzman were not consistent with his description to Mr. Crum and Dr. Turner. Dr. Goodykoontz concluded that although B.M. has experienced and described several symptoms, the frequency and severity do not support a diagnosis of PTSD. Further, Dr. Goodykoontz indicated that there was no evidence of current symptoms or documentation to support a diagnosis of major depressive disorder.

On July 24, 2024, counsel for B.M. requested that the compensable diagnosis codes be updated to include major depressive disorder and PTSD based upon a Workers’ Compensation Diagnosis Update form completed by Dr. Turner on January 17, 2023. By order dated July 25, 2024, the claim administrator denied B.M.’s request to add PTSD and major depressive disorder as compensable conditions in the claim. The claim administrator denied the conditions as it found that the “request does not meet the requirements set forth in 85 CSR 20 for a psychiatric report.” B.M. protested this order to the Board.

The Board issued an order dated January 15, 2025, which affirmed the claim administrator’s order denying the request to add PTSD and major depressive disorder as compensable conditions in the claim. The Board found that B.M. did not comply with West Virginia Code of State Rules § 85-20-12.4, because there was no evidence that he was

referred for a psychiatric consultation by his treating physician. It is from this order that B.M. 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, B.M. argues that the Board erred in denying compensability of PTSD and major depressive disorder without considering the substantive medical evidence supporting those diagnoses. Further, B.M. asserts that the first medical note from Mountain Comprehensive Care specifically states that his doctor wanted him to be seen by a psychiatrist.

West Virginia Code of State Regulations § 85-20-12.4 provides:

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 condition; 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 upon that report, the claim administrator will make a determination regarding compensability. *See Hale v. W. Va. Off. of the Ins. Comm’r*, 228 W. Va. 781, 724 S.E.2d 752 (2012) (holding that the three-step process must be followed when a claimant is seeking to add a psychiatric disorder as a compensable component in the claim.).

Here, the record indicates that B.M.’s treating physician wanted him to be seen by a psychiatrist, as evidenced by the first medical note from Mountain Comprehensive Care dated December 1, 2021. The record contains no evidence to the contrary, and to the extent that the Board required more evidence that B.M.’s treating physician referred him for a psychiatric consultation, we find the ruling “elevated form over substance” in violation of West Virginia Code § 23-1-1(b) (2022).³ *See Moore v. ICG Tygart Valley, LLC*, 247 W. Va. 292, 299, 879 S.E.2d 779, 786 (2022).⁴

We conclude that the Board was clearly wrong in finding that there is no medical evidence to support a finding that B.M. was referred for a psychiatric consultation by his treating physician. Further, the record establishes that B.M. underwent psychiatric evaluations by Drs. Barzman and Goodykoontz pursuant to West Virginia Code of State Rules § 85-20-12.4. Thus, we vacate the Board’s order and remand the claim to the Board for further consideration on the merits as to whether PTSD and major depressive disorder are compensable conditions in the claim.

Accordingly, we vacate the Board’s January 15, 2025, order and remand the claim for further proceedings consistent with this decision.

Vacated and Remanded.

³ West Virginia Code § 23-1-1(b) provides, in part:

It is the further intent of the Legislature that this chapter be interpreted so as to assure the quick and efficient delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of this chapter. It is the specific intent of the Legislature that workers’ compensation cases shall be decided on their merits...

⁴ We also note that in *Genesis Healthcare Corp. v. D.N.*, No. 21-0500, 2023 WL 355658 (W. Va. Jan. 23, 2023) (memorandum decision), the employer argued that the claimant failed to strictly meet the requirements of West Virginia Code of State Rules § 85-20-12.4 because he submitted treatment notes evidencing a psychiatric impairment and not a psychiatric report. The West Virginia Supreme Court of Appeals found that the claimant provided sufficient evidence of a psychiatric impairment.

ISSUED: September 30, 2025

CONCURRED IN BY:

Chief Judge Charles O. Lorensen

Judge Daniel W. Greear

Judge S. Ryan White