

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

DAVID NEELY,
Claimant Below, Petitioner

v.) No. 25-ICA-98 (JCN: 2024008538)

PRESSURE VESSEL SERVICES, INC.,
Employer Below, Respondent

FILED
September 30, 2025

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

MEMORANDUM DECISION

Petitioner David Neely appeals the February 11, 2025, order of the Workers' Compensation Board of Review ("Board"), which affirmed the decision of the claim administrator and found Mr. Neely suffered a lumbar strain in the course of and resulting from his employment. Respondent Pressure Vessel Services, Inc. ("Pressure Vessel") filed a response, and Mr. Neely filed a reply.¹

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 West Virginia Rules of Appellate Procedure.

Mr. Neely was employed by Pressure Vessel as an 18-wheel truck driver, and his job duties involved driving and loading the truck. On October 28, 2023, Mr. Neely was exiting the cab of the truck near the end of his shift when he felt a pop in his lower back. He was off the next day and had difficulty walking, so he sought medical treatment via an e-visit with Fairmont Gateway Clinic Urgent Care, where over-the-counter pain relievers were recommended, and he was told to schedule an in-person visit if his symptoms worsened or did not improve. On October 30, 2023, Mr. Neely's pain increased, and he went to Glen Dale MedExpress Urgent Care, where an x-ray, revealing degenerative changes and anterior osteophytes at L4 and L5, was performed, and he was diagnosed with a lumbar sprain. On November 1, 2023, Mr. Neely went to the emergency room at Wetzel County Hospital because he continued to experience pain and was diagnosed with radicular back pain with sciatica. The emergency room notes state that the x-ray performed at MedExpress was reportedly normal.

¹ Mr. Neely is represented by Sandra K. Law, Esq. Pressure Vessel is represented by Melissa Stickler, Esq.

On November 2, 2023, Mr. Neely's pain continued to increase, and he went to the Reynolds Memorial Hospital Emergency Room where he underwent a lumbar CT scan that revealed severe lumbar spondylosis that was both acquired and congenital. At discharge, Mr. Neely's diagnosis was acute left-sided low back pain with left-sided sciatica, and he was referred to neurosurgery. On November 4, 2023, Mr. Neely's back pain had worsened, and he was unable to walk. He was taken by ambulance to Wheeling Hospital. A treatment note dated November 4, 2023, from Wheeling Hospital states that Mr. Neely had a past medical history of lumbar stenosis and a back surgery in 2012, among other diagnoses. A lumbar MRI was performed at Wheeling Hospital that showed a congenitally small spinal canal throughout the lumbar spine, severe spinal stenosis at L3-4, moderate spinal stenosis at L2-3, and mild to moderate spinal stenosis at L4-5. He remained hospitalized until November 8, 2023, and then underwent physical therapy and pain management.

As a result of his October 28, 2023, injury, Mr. Neely submitted a claim for workers' compensation benefits. On November 9, 2023, the claim administrator denied the claim, and Mr. Neely protested this decision. Alexis Cowieson, PA, with Allegheny Health Network, examined Mr. Neely on November 14, 2023. PA Cowieson reviewed the lumbar MRI dated November 4, 2023, and diagnosed chronic low back pain with bilateral sciatica and lumbar stenosis with neurogenic claudication. Further, PA Cowieson noted that the significant degenerative changes correlated with Mr. Neely's complaints.

On January 4, 2024, Mr. Neely was deposed and testified that he underwent a previous back surgery in 2012 but stated he had no problems with his back until he experienced the pop in his back on October 28, 2023. He also testified that his symptoms in 2012 were different from his symptoms in 2023. On January 11, 2024, Mathew J. Shepard, M.D., Mr. Neely's treating surgeon, completed a Diagnosis Update form, which diagnosed Mr. Neely's October 28, 2023, injury as chronic low back pain with bilateral sciatica and lumbar stenosis with neurogenic claudication. On January 31, 2024, Mr. Neely underwent a partial L1 laminectomy, a complete laminectomy from L2 to L4, and discectomy performed by Dr. Shepard.

On July 15, 2024, the Board reversed the claim administrator's November 9, 2023, order. The Board ordered that the claim be recognized as compensable and remanded the claim to the claim administrator to determine the appropriate compensable diagnosis. On August 20, 2024, the claim administrator held the claim compensable for a lumbar strain. Mr. Neely again protested, and argued that Dr. Shepard's diagnoses of lumbar stenosis with neurogenic claudication, spinal canal narrowing with disc bulge and compression of the cauda equina at L2-L3 and L3-L4, and diffuse bulges at L4-L5 and L5-S1 should be added as compensable diagnoses in this claim. On February 11, 2025, the Board affirmed the claim administrator's decision and found that Dr. Shepard's diagnosis of chronic lower back pain with bilateral sciatica was not compensable because pain is a symptom and not a compensable component of a claim. The Board further determined that the lumbar stenosis, spinal canal narrowing, and diffuse bulges were also not compensable because

the record lacked sufficient medical evidence to show a relationship between the compensable lumbar strain and these diagnoses. It is from this order that Mr. Neely 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. Neely asserts one assignment of error and argues the Board was clearly wrong because it relied on its own interpretation of medical evidence and failed to follow the medical opinion of Dr. Shepard. Mr. Neely argues that the diagnoses of lumbar stenosis with neurogenic claudication, which was proposed by Dr. Shepard, as well as the spinal canal narrowing with disc bulge and compression of the cauda equina at L2-L3 and L3-L4 and diffuse bulges at L4-L5 and L5-S1, which were asserted in Mr. Neely's closing argument to the Board, should all be added as compensable diagnoses.² Mr. Neely claims that the Board should have ruled in his favor because Pressure Vessel presented no evidence contradicting Dr. Shepard's opinion. We disagree.

"In order for a claim to be held compensable under the Workmen's Compensation Act, 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 Workmen's Comp. Comm'r*, 153 W. Va. 796, 172 S.E.2d 698 (1970); *see also* W. Va. Code

² Mr. Neely does not appeal the Board's denial of chronic low back pain with bilateral sciatica as a compensable diagnosis.

§ 23-4-1(a) (2021). The Supreme Court of Appeals of West Virginia (“SCAWV”) has established the standard for when the aggravation of a preexisting condition could be held compensable as follows:

A noncompensable preexisting injury may not be added as a compensable component of a claim for workers' compensation medical benefits merely because it may have been aggravated by a compensable injury. To the extent that the aggravation of a noncompensable preexisting injury results in a [discrete] new injury, that new injury may be found compensable.

Syl. Pt. 3, *Gill v. City of Charleston*, 236 W. Va. 737, 783 S.E.2d 857 (2016). In the instant case, Mr. Neely has the burden of proving that his lumbar strain, as the compensable injury, exacerbated, accelerated, or worsened his preexisting back condition causing a new distinct injury. See Syl. Pt. 2, *Sowder v. State Workmen’s Comp. Comm’r*, 155 W. Va. 889, 189 S.E.2d 674 (1972) (“A claimant in a workmen's compensation case must bear the burden of proving his claim but in doing so it is not necessary to prove to the exclusion of all else the causal connection between the injury and the employment.”) Further,

[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.

Syl. Pt. 5, *Moore v. ICG Tygart Valley, LLC*, 247 W. Va. 292, 879 S.E.2d 779 (2022).

Mr. Neely argues that lumbar stenosis with neurogenic claudication, spinal canal narrowing with disc bulge and compression of the cauda equina at L2-3 and L3-4, and diffuse bulges at L4-5 and L5-S1 should be compensable. However, we note that Dr. Shepard’s Diagnosis Update form only lists chronic midline low back pain with bilateral sciatica and lumbar stenosis with neurogenic claudication as the secondary conditions. In other words, Mr. Neely did not submit medical evidence giving an opinion that spinal canal narrowing with disc bulge and compression of the cauda equina at L2-3 and L3-4 and diffuse bulges at L4-5 and L5-S1 were caused by the compensable injury. “A claimant must establish compensability through competent evidence demonstrating that he or she suffers from a disability incurred in the course of and resulting from his or her employment and that there is a causal connection between the disability and the employment. *Lambert v. Contura Energy, Inc.*, No. 21-0868, 2023 WL 5978198, at *4 (W. Va. Sept. 14, 2023) (memorandum decision). See also, *Deverick v. State Compensation Director*, 150 W. Va.

145, 144 S.E.2d 498 (1965). Because Mr. Neely did not submit the necessary causation evidence regarding spinal canal narrowing with disc bulge and compression of the cauda equina at L2-3 and L3-4 and diffuse bulges at L4-L5 and L5-S1, the Board was not clearly wrong when it affirmed the claim administrator's denial of these two conditions.

With respect to Dr. Shepard's opinion regarding lumbar stenosis with neurogenic claudication, we note that in 2012 the claimant underwent a prior lumbar surgery and according to a treatment note dated November 4, 2023, from Wheeling Hospital, Mr. Neely also had a history of lumbar stenosis, and a lumbar MRI with the same date was interpreted as showing multilevel degenerative changes. As is mentioned above, *Gill* bars noncompensable preexisting conditions from being added as compensable components of a West Virginia workers' compensation claim. The medical evidence establishes that Mr. Neely had a history of lumbar stenosis. Therefore, the Board was not clearly wrong when it affirmed the claim administrator's order denying lumbar stenosis with neurogenic claudication as an additional compensable condition in this claim.

Accordingly, we affirm the Board's February 11, 2025, order.

Affirmed.

ISSUED: September 30, 2025

CONCURRED IN BY:

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