

No. 25-485

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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CHARLESTON

TRACARDEBRE, LLC,

PETITIONER,

v.

SUPREME COURT NO.: 25-485
ICA APPEAL NO.: 24-ICA-303
JCN: 2023004462
DOI: 07/07/2022

FERNANDO MARQUEZ,

RESPONDENT.

RESPONSE OF FERNANDO MARQUEZ, RESPONDENT, TO
EMPLOYER'S PETITION FOR APPEAL

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FROM THE INTERMEDIATE COURT OF
APPEALS OF WEST VIRGINIA

RESPONSE OF FERNANDO MARQUEZ, RESPONDENT, TO
EMPLOYER'S PETITION FOR APPEAL

TO: THE HONORABLE JUSTICES OF THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

I.

STATEMENT OF CASE

This claim comes before the Supreme Court of Appeals of West Virginia, pursuant to the employer's appeal from an Intermediate Court of Appeals of West Virginia Memorandum Decision dated April 29, 2025, certified by Mandate dated June 25, 2025, which affirmed in part and reversed in part the June 28, 2024 Order of the Workers' Compensation Board of Review. The June 28, 2024 Board of Review order affirmed the Claims Administrator's Orders dated August 3, 2023, denying authorization for left knee arthroscopy and right shoulder arthroscopy; and September 11, 2023, denying NCS/EMG right upper extremity and referral to WVU Pain Management Clinic. The Intermediate Court of Appeals affirmed the August 3, 2023 order, and reversed the September 11, 2023 orders of the Claims Administrator. Your Respondent, Fernando Marquez, respectfully asserts that the Memorandum Decision of the Intermediate Court of Appeals dated April 29, 2025, and the Mandate of June 25, 2025 represents the correct application of the applicable law to the evidence of record, and he does respectfully pray that this Honorable Court will affirm the April 29, 2025 Intermediate Court of Appeals Memorandum Decision and the Mandate of June 25, 2025 in their entirety.

II.

STATEMENT OF FACTS

Fernando Marquez injured his right shoulder and left knee in the course of and resulting from his employment with Tracardebre, LLC (herein employer), on July 7, 2022, when he slipped on a rug and fell while carrying a boiling pot of chicken wings to a sink. Mr. Marquez stated that when he fell, he used his left arm to push away the pot of boiling chicken to avoid having it spill on him, and landed on his right elbow on the tile floor which severely jammed his right shoulder. (Pet.Ex.2) Mr. Marquez was seen by Annie Mann, NP, with Valley Health Urgent

Care Spring Mills on July 18, 2022, where he filled out an Employees' and Physicians' Report of Occupational Injury, which stated that Mr. Marquez had suffered injury to multiple body parts, but did not state diagnoses or diagnosis codes. (Pet.Ex.1)

A Work Status Summary was completed stating that Mr. Marquez was seen by NP Mann on July 18, 2022 for an injured right elbow up to the shoulder, and right hip injury, which resulted from a fall at work on July 7, 2022. Diagnosis was calcific tendinitis of the right shoulder, and work restrictions were applied to activities involving Mr. Marquez's right elbow and right shoulder. A right shoulder x-ray was found to be "normal". An MRI was ordered, and Mr. Marquez was provided a referral to physical therapy. (Pet.Ex.3)

Mr. Marquez began physical therapy at Pivot Physical Therapy on September 6, 2022. He presented with increased right shoulder and elbow pain/dysfunction following a slip and fall at work. Records further indicate that he had symptoms consistent with right shoulder tendonitis, secondary impingement, increased ulnar nerve tension, and increased pain. He was discharged from physical therapy on October 27, 2022 due to a lack of progress after 16 treatments. He had increased ROM and strength in his right shoulder, but continued to report increased pain levels, and clicking/cracking in the right shoulder with overhead movements. (Pet.Ex.4)

On September 7, 2022, Berkshire Hathaway Guard Insurance wrote a letter to East Mountain Health Physician - Spring Mills, stating,

Dear Provider: Please accept this as authorization to allow the claimant to schedule and reschedule any appointments needed with your office in regards to the Workers Compensation claim for the Left shoulder, elbow, and arm. This is including his initial appointment. I do not have his availability and he is the best person to schedule any appointments.

(Pet.Ex.5)

John Mikes, NP, at WVU Orthopaedics-Spring Mills, under Dr. Dwight Kemp, examined Mr. Marquez on January 27, 2023, for left knee pain beginning after an injury he stated he

sustained while at work on July 7, 2022. NP Mikes assessed: 1. Closed displaced fracture of the left patella; 2. Avulsion of left patellar tendon. (Pet.Ex.6) An MRI dated January 27, 2023, was interpreted to show Horizontal tear of the posterior horn and body of the medial meniscus. (Pet.Ex.7) Dr. Kemp performed a partial medial meniscectomy, left knee by arthroscope on February 15, 2023 for the diagnosis of left knee medial meniscus tear, prior inferior pole patella fracture, nondisplaced, non-symptomatic. (Pet.Ex.8)

Mr. Marquez returned to NP Mikes on March 2, 2023 for post-op follow up reporting that he was walking without pain, and that his elbow pain had resolved, but he continued to experience pain across the lateral aspect, anterior to posterior of his right shoulder, and showed NP Mikes that he could not really reach at all. NP Mikes assessed right shoulder rotator cuff dysfunction and ordered a right shoulder MRI. (Pet.Ex.9) This MRI was performed at WVU Medicine on March 22, 2023, and impression was: “1. Large full-thickness incomplete tear of the supraspinatus tendon with mild tendon retraction and no muscle atrophy. 2. No biceps tendon tear of subluxation. 3. No labral or capsular/ligamentous injury.” (Pet.Ex.10) NP Mikes followed up with Mr. Marquez on March 24, 2023 for this MRI, stating that this injury occurred during a fall at work in July of 2022 when Mr. Marquez was carrying a pot of boiling water and slipped and fell, landing on his right elbow, injuring his knee, elbow, and shoulder. NP Mikes assessed right rotator cuff tear, and Mr. Marquez consented to a right shoulder arthroscopy with rotator cuff repair and platelet rich plasma injection. (Pet.Ex.11) Dr. Kemp performed a right shoulder arthroscopy with rotator cuff repair, with injection of platelet rich plasma, and acromioplasty decompression on April 5, 2023 for the diagnosis of right shoulder rotator cuff tear, impingement. (Pet.Ex.12) Mr. Marquez returned to Dr. Kemp on April 24, 2023 for post-op follow up. He reported a good amount of pain and was advised to continue with self exercises for

about 3-4 weeks, to be followed by physical therapy. Dr. Kemp stated that Mr. Marquez was not able to return to his full-time employment requiring the use of his shoulder or lifting. (Pet.Ex.13)

NP Mikes signed a request for treatment, requesting authorization for a Left Knee Arthroscopy with Partial Medial Meniscectomy, Right Shoulder Arthroscopy with Rotator Cuff Tear, and PRP Injection on May 25, 2023. This form indicated July 7, 2022 as the date of injury, and the description was a slip and fall at work. He stated, "MRI confirmed torn meniscus and rotator cuff after falling injury at work." (Pet.Ex.14) NP Mikes also completed a TTD Benefits Claims Reopening form on May 25, 2023, requesting TTD Benefits from January 27, 2023 through July 1, 2023, for Mr. Marquez's July 7, 2022 work injury. NP Mikes indicated that the diagnoses were Patella Fracture, Patellar Tendon Avulsion, Medial Meniscus Tear, and Rotator Cuff Tear. Mr. Marquez had been treated with arthroscopic surgery of the left knee and right shoulder, and NP Mikes indicated that Mr. Marquez had no current limitation with the knee at that point. NP Mikes indicated no overhead lifting with the right shoulder, and no heavy pushing, pulling, carrying, no lifting. NP Mikes indicated that the total length of injury from his first treatment of Mr. Marquez to release was likely January 27, 2023, to August 5, 2023, and that the current condition or disability was a direct result of the July 7, 2022 work injury. (Pet.Ex.15) NP Mikes signed another Claims Reopening application on June 9, 2023, indicating that the current diagnosis was right rotator cuff with poor strength, ROM, pain, and subsequent surgery from a fall at work on July 7, 2022. (Pet.Ex.16)

NP Mikes evaluated Mr. Marquez again on August 24, 2023, stating that his right arm numbness had not improved since his injury. Mr. Marquez stated that he had pain in his neck and trapezius area, which radiated down his arm posteriorly and also into the volar forearm. He reported intermittent pain across his chest to the lateral shoulder and intermittent numbness in the ulnar nerve distribution in his hand. Assessment was traumatic complete tear of right rotator cuff,

postoperative state, and cervical radiculopathy. NP Mikes stated that he would get an EMG study for the neurological symptoms, and observed that the symptoms appeared to originate in the neck, and that Mr. Marquez may have a double crush. He was referred for an EMG/NCS and to pain management to begin receiving treatment. (Pet.Ex.17)

Mr. Marquez testified at a deposition held on August 29, 2023. He stated that on July 7, 2022, his right foot slipped on a rug while carrying a boiling pot of chicken wings, and that his left leg twisted as he fell to the ground holding the bucket with his right hand. He hit his elbow on the ground and he reported that his right elbow was bleeding, his right shoulder felt dislocated, and that his left knee developed swelling. He initially reported to his primary care provider on July 8, 2022, but did not complete the Report of Occupational Injury until being seen at Valley Health Urgent Care on July 18, 2022. His primary care provider gave him muscle relaxers and made an appointment at Valley Health Urgent Care for x-rays of the right shoulder and left knee, to allow time for swelling to reduce. He stated that he underwent physical therapy from September 6, 2022 through October 27, 2022, at which time he was working light duty for 4-6 hours, until he stopped working in January after his left knee surgery. He underwent shoulder surgery in April. Mr. Marquez stated that he talked with the Workers' Compensation carrier, Berkshire Hathaway Guard Insurance, about his surgeries, but was told that his case was on hold because they did not know if surgery for his knee would be scheduled. He stated that he was told surgery was not approved and his case was pending, so he pursued this surgery under his private insurance. He stated that he was sent for pain management and an EMG, and denied ever having any problem with his knee or shoulder prior to his July 7, 2022 injury. (Pet.Ex.18)

Mr. Marquez stated that he had called Berkshire and spoken with a representative named "Angie" who said that his claim was "on hold" because they did not know if he had been hurt that bad. He stated that he had called in October, December, and January and needed to undergo

surgery, but was told it was not approved. He believed that Angie had told him that she had neither the records nor the request for surgery, but would call the hospital to get the records. He stated that NP Mikes took him off work when he had knee surgery, and that NP Mikes had completed a request for TTD benefits. Mr. Marquez stated that he took his application for disability to his employer, but was told the employer did not need to sign anything. He stated that the employer did not submit the TTD request, and he later took the reopening request to his attorney. (Id.)

Dr. Leslie Foster, with Pain Management at WVU Medicine Brain and Spine, evaluated Mr. Marquez September 8, 2023. She stated that Mr. Marquez was referred by NP Mikes, and that Mr. Marquez presented with pain in his right shoulder, right elbow, neck, right upper extremity numbness and tingling, and knee pain related to a work injury on July 7, 2022. The pain was described as cramping, shooting, stabbing, sharp, electric, tender with numbness, tingling, and stinging in the right upper extremity. Mr. Marquez stated that the numbness seemed to come from his right elbow into his hand. Dr. Foster found intermittent numbness in an ulnar nerve distribution, rather than a cervical radicular C8 distribution. She noted that he had an upcoming EMG of the right upper extremity scheduled for October 12, 2023. Impression was cervical radiculopathy, rotator cuff tear, elbow pain, numbness and tingling right upper extremity, and weakness right upper extremity. Dr. Foster ordered x-rays and a CT of the cervical spine. (Pet.Ex.19) A CT of the cervical spine was performed on September 19, 2023 and interpreted on September 20, 2023 to show no acute fracture or traumatic malalignment of the cervical spine and mild degenerative changes of the cervical spine with no definite high-grade spinal canal or osseous neural foraminal stenosis. (Pet.Ex.20)

EMG/NCV testing was performed on October 12, 2023 for neck pain, right upper extremity pain, paresthesia, and weakness that started in July of 2022. Impression was right

median neuropathy at the wrist (carpal tunnel) and mild chronic right ulnar neuropathy not further localized (likely at his right elbow). (Pet.Ex.21)

Alan Dombrosky, PA-C at Fredrick Health Medical Group, evaluated Mr. Marquez on November 30, 2023 for right shoulder and left knee pain beginning at the time of his work injury. Assessment was chondromalacia patella, left knee and primary osteoarthritis, unspecified shoulder/acromioclavicular joint arthritis. Injections were administered into the right shoulder and left knee. (Pet.Ex.22) PA Dombrosky authored an addendum dated December 15, 2023 stating that Mr. Marquez's injury was in July 2022 and that he had surgery on his knee and shoulder and continued to experience pain. (Pet.Ex.23)

On June 28, 2024, the Board of Review issued its Order regarding these matters in litigation. The Board reversed the Claims Administrator's Order of June 29, 2023, and granted TTD benefits from April 5, 2023 through August 5, 2023, and thereafter as substantiated by proper medical evidence. It affirmed the Claims Administrator's Order of August 3, 2023 denying the request to add left knee arthroscopy and right shoulder arthroscopy. It affirmed in part and reversed in part the Claims Administrator's August 3, 2023 Order, reversing the Claims Administrator's rejection of right rotator cuff tear, and affirming the Claims Administrator's denial of left medial meniscus tear, left patella fracture, and left patellar tendon avulsion. Lastly, the Board affirmed the Claims Administrator's denial of request for EMG/NCS Study and referral to WVU Pain Management. (Pet.Ex.24)

On April 29, 2025, the Intermediate Court of Appeals issued a Memorandum Decision reversing in part and affirming in part the Board's June 28, 2024 Order. The June 28, 2024 Board of Review order affirmed the Claims Administrator's Order dated August 3, 2023, denying authorization for left knee arthroscopy and right shoulder arthroscopy; and September 11, 2023, denying NCS/EMG right upper extremity and referral to WVU Pain Management Clinic. The

Intermediate Court of Appeals affirmed the August 3, 2023 order, and reversed the September 11, 2023 order of the Claims Administrator, authorizing a right shoulder arthroscopy, an NCS/EMG right upper extremity, and referral to WVU Pain Management Clinic. The Intermediate Court found that because the Board's Order held Mr. Marquez's right rotator cuff tear to be a compensable condition, the Board was therefore wrong for denying a reasonable and necessary right shoulder arthroscopy. It further found that an NCS/EMG and referral to the WVU Pain Management clinic were reasonable and necessary treatments to determine the cause of Mr. Marquez's right shoulder pain and numbness. (Pet.Ex.28) This decision was certified by Mandate dated June 25, 2025. (Pet.Ex.29)

III.

BASIS FOR AFFIRMING THE INTERMEDIATE COURT OF APPEALS' ORDER

The Decision of the Intermediate Court of Appeals of West Virginia dated April 29, 2025 was clearly correct in reversing in part the Board of Review's Order of June 28, 2024, based upon the totality of the evidence properly of record in this claim, and the law applicable thereto.

IV.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Your claimant and Respondent, Fernando Marquez, respectfully submits that the issues herein neither require nor would be aided by oral argument and present no new issue of law. Therefore, it is requested that a memorandum decision be issued herein.

V.

POINTS OF LAW AND CITATIONS OF AUTHORITY

- 1) 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.

West Virginia Code § 23-5-12a(b) (2022)

2) If, after weighing all of the evidence regarding an issue in which a claimant has an interest, there is a finding that an equal amount of evidentiary weight exists favoring conflicting matters for resolution, the resolution that is most consistent with the claimant's position will be adopted.

West Virginia Code §23-4-1g(a).

3) The Claims Administrator is required to provide reasonable and necessary treatment, health care, or healthcare goods and services.

West Virginia Code §23-4-3 and 85 CSR 20

4) 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 afterward. 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.

Moore v. ICG Tygart Valley, LLC (W. Va. 2022)

VI.

ARGUMENT

Fernando Marquez injured his right shoulder on July 7, 2022, when he slipped and fell in the course of and resulting from his occupational duties in Employer's kitchen, while carrying a pot of boiling chicken to a sink, a duty of his employment. At the time of his fall, he landed with his right elbow on the tile floor below, injuring nerves in his right elbow and tearing his right

rotator cuff. Since his time of injury, he continuously experienced intermittent numbness in his right upper extremity, and pain and limitations in his right shoulder.

Mr. Marquez came under the care of NP John Mikes with WVU Orthopaedics-Spring Mills, under Dr. Dwight Kemp, on January 27, 2023. A right shoulder MRI was performed on March 22, 2023 and revealed: 1. Large full-thickness incomplete tear of the supraspinatus tendon with mild tendon retraction and no muscle atrophy. 2. No biceps tendon tear or subluxation. 3. No labral or capsular/ligamentous injury. NP Mikes specifically attributed this injury to Mr. Marquez's work injury of July 7, 2022, and noted that no degenerative disease was seen in the AC or GHJ; his labrum was intact; and biceps tendon was intact. Based upon this MRI, Dr. Kemp found surgery to be indicated and performed a right shoulder arthroscopy rotator cuff repair, injection of platelet rich plasma, and acromioplasty decompression on April 5, 2023 for the diagnosis of right shoulder rotator cuff tear, with impingement.

On May 25, 2023, NP Mikes submitted a Request for Treatment form, including in-part a request for authorization to perform a Right Shoulder Arthroscopy with Rotator Cuff Tear, and PRP Injection, based upon the March 22, 2023 MRI which confirmed a torn right rotator cuff resulting from a fall injury at work. However, this request was wrongly denied by Order of the Claims Administrator dated August 3, 2023, and affirmed by the June 28, 2024 Order of the Board of Review, despite the clearly reasonable and necessary nature of the requested procedure to address a compensable condition. The Intermediate Court of Appeals was clearly correct to reverse this decision, and retroactively authorize the requested treatment.

i.

The Intermediate Court of Appeals was clearly correct in reversing in-part the Board of Review's June 28, 2024 Order, and retroactively authorizing the right shoulder arthroscopy, as "Right Rotator Cuff" has now been determined to be a compensable condition.

The Intermediate Court of Appeals was clearly correct in reversing the Board of Review's June 28, 2024 Order because this Order held Mr. Marquez's right rotator cuff tear to be a compensable condition within his claim, yet also wrongly affirmed the denial of medically reasonable and necessary treatment to address his compensable injury. "The Claims Administrator is required to provide reasonable and necessary treatment, health care, or healthcare goods and services." West Virginia Code §23-4-3 and 85 CSR 20. Here, The Court found that the Board's Order had held Mr. Marquez's right rotator cuff tear compensable, yet failed to authorize reasonable and necessary treatment. Therefore, the Intermediate Court of Appeals was clearly correct to reverse the Board's Order, and retroactively authorize the medically reasonable and necessary treatment.

ii.

The Intermediate Court of Appeals was clearly correct in reversing in-part the Board of Review's June 28, 2024 Order, because the Claims Administrator's September 1, 2023 denial of a request for EMG/NCS and referral to WVU Pain Management was clearly wrong.

Mr. Marquez reported experiencing numbness throughout his right upper extremity when his head was turned slightly during a dentist appointment. NP Mikes further noted that Mr. Marquez reported that sometimes his shoulder would "grab" if he reaches out too quickly for an object. In addition to the injuries Mr. Marquez sustained to his shoulder on July 7, 2022, he also damages nerves in his right elbow when he struck it on the kitchen's hard tile floor. He has testified that this impact was severe enough to cause his elbow to bleed, and that on July 18, 2022, doctors at Valley Health tested from his shoulder down to his fingers with a needle, finding that he was unable to feel anything. Based upon his ongoing symptoms of numbness and weakness in his right upper extremity, NP Mikes referred Mr. Marquez for an EMG/NCS on August 24, 2023.

Mr. Marquez has testified that despite the treatment he had received, he continued to experience strength deficits and was only able to lift approximately 3 pounds to face-height, and that his arm would shake when he would reach the end of his range of motion. He testified that prior to this injury, he had no history of problems or limitations with his right shoulder or arm, and that they began and continued to manifest thereafter since his injury. Despite these newly developed ongoing symptoms and limitations, NP Mikes' request was wrongly denied by Order of the Claims Administrator dated September 11, 2023, stating that there was no compensable cervical injury within Mr. Marquez's claim. This Order was wrongly affirmed by the Board.

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 afterward. 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.

Moore v. ICG Tygart Valley, LLC (W. Va. 2022) Here, Mr. Marquez did not suffer from these conditions or limitations prior to his compensable injury. As such, NP Mikes' request for testing to thoroughly examine the cause of these symptoms is medically reasonable and necessary. The Intermediate Court correctly reversed the Board's clear error, and found that NP Mikes' requested neurological testing was medically reasonable and necessary to ascertain the specific origin of Mr. Marquez's ongoing symptoms related to his compensable injuries.

In its Decision reversing the Board's Order, the Intermediate Court correctly concluded that Mr. Marquez was not required to have a compensable cervical condition prior to a diagnostic test to determine whether his symptoms originated in his cervical spine or his shoulder, and therefore concluded that the EMG/NCS testing was a reasonable and necessary diagnostic tool in Mr. Marquez's treatment.

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; or
2. In excess of the statutory authority or jurisdiction of the Board of Review; or
3. Made upon unlawful procedures; or
4. Affected by other error of law; or
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.

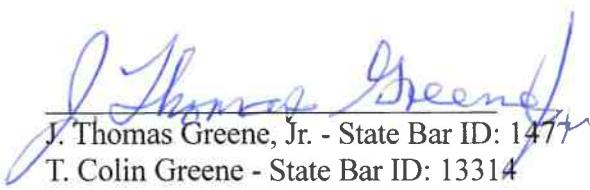
West Virginia Code § 23-5-12a(b) (2022) Here, the Intermediate Court found that the Board of Review was clearly wrong in affirming the Claims Administrator's August 3, 2023 Order denying NP Mikes' request for authorization for Mr. Marquez to undergo a right shoulder arthroscopic surgery, and in affirming the Claims Administrator's September 11, 2023 Order denying authorization for an EMG/NCS and referral to Pain Management. The Court found that Mr. Marquez's claim was held compensable for a right shoulder rotator cuff tear, and the arthroscopy; requested EMG/NCS; and referral to WVU Pain Management were reasonable and medically necessary testing and treatment for the resolution of Mr. Marquez's ongoing neurological symptoms which he did not have prior to his compensable work injury of July 7, 2022. "If, after weighing all of the evidence regarding an issue in which a claimant has an interest, there is a finding that an equal amount of evidentiary weight exists favoring conflicting matters for resolution, the resolution that is most consistent with the claimant's position will be adopted." West Virginia Code §23-4-1g(a) Here, the evidence of record clearly supports affirming the Intermediate Court of Appeals Decision dated April 29, 2025.

VII.

PRAYER

WHEREFORE, your claimant and Respondent, Fernando Marquez, respectfully prays that this Honorable Court will AFFIRM the April 29, 2025 Decision of the Intermediate Court of Appeals of West Virginia, which REVERSED IN PART the Order of the Board of Review dated June 28, 2024, affirming the Claims Administrator's Orders dated August 3, 2023, denying authorization for a right shoulder arthroscopy; and September 11, 2023, denying NCS/EMG right upper extremity and referral to WVU Pain Management Clinic, and retroactively authorized the requested Right Shoulder Arthroscopy, NCS/EMG Right Upper Extremity, and Referral to WVU Pain Management Clinic.

Respectfully submitted,
Fernando Marquez
By Counsel

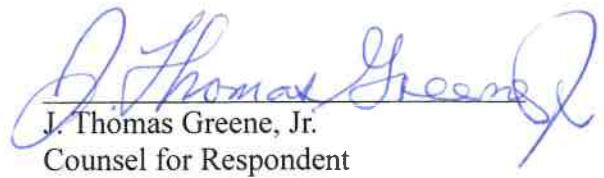


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CERTIFICATE OF SERVICE

I, J. Thomas Greene, Jr., counsel for the Respondent, Fernando Marquez, do hereby certify that on this the 22nd day of August, 2025, a copy of the foregoing Response Of Fernando Marquez, Respondent, To Employer's Petition for Appeal was served upon Daniel G. Murdock, Esq., Counsel for the Employer and Petitioner, Tracardebre, LLC, by service via File&ServeXpress.



J. Thomas Greene, Jr.
Counsel for Respondent