IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

FILED
August 27, 2026
ASHLEY N. DEEM, CHIEF DEPUTY CLERK
INTERMEDIATE COURT OF APPEALS
OF WEST VIRGINIA

CITY OF WHEELING,
Employer Below, Petitioner

v.) No. 26-ICA-73 (JCN: 2024019278)

DAVID GILBERT,
Claimant Below, Respondent

MEMORANDUM DECISION

Petitioner City of Wheeling ("Wheeling") appeals the January 28, 2026, order of the Workers' Compensation Board of Review ("Board"). Respondent David Gilbert filed a response.[1] Wheeling did not reply. The issue on appeal is whether the Board erred in reversing the claim administrator's order, which denied authorization for left wrist arthroscopy.

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. Gilbert, a firefighter employed by Wheeling, filed an Employees' and Physicians' Report of Occupational Injury or Disease dated April 22, 2024, alleging that he injured his left wrist on April 18, 2024, while pulling on a stuck valve.[2] The physician's section indicates that Mr. Gilbert sustained an occupational injury to his left wrist.

On April 22, 2024, Frank Gaudio, M.D., evaluated Mr. Gilbert, who reported that his left wrist had popped out of joint several times since the injury on April 18, 2024. Mr. Gilbert further indicated that he had pain over the dorsal aspect of the left wrist. Dr. Gaudio

[1] Wheeling is represented by Aimee M. Stern, Esq. Mr. Gilbert is represented by Sandra K. Law, Esq.

[2] The Board noted that an Incident & Investigation Report dated April 18, 2024, states that Mr. Gilbert suffered a sprain/dislocation of his left wrist while pulling on a stuck valve on the same day.

believed Mr. Gilbert had a ligamentous tear. Mr. Gilbert underwent an x-ray of the left wrist dated April 22, 2024, revealing no acute abnormality.

On May 16, 2024, the claim administrator issued an order holding the claim compensable for a left wrist sprain. On May 23, 2024, Ross Tennant, NP, began treating Mr. Gilbert, who reported that he had been working full duty for over a month and that his left wrist symptoms had not improved. Further, Mr. Gilbert stated that it felt like something was popping in and out of place in his left wrist. NP Tennant assessed a left wrist sprain. On August 12, 2024, Mr. Gilbert followed up with NP Tennant and reported pain in the ulnar aspect of the left wrist. Mr. Gilbert began treatment with Charles Tracy, M.D., on August 30, 2024, and he reported that his left wrist pain had progressively worsened and the shifting or popping in his wrist had persisted.

Mr. Gilbert was deposed on November 11, 2024. Regarding his left wrist, Mr. Gilbert said that he had experienced a feeling of joint instability or gapping of the left wrist prior to December 1, 2023; and that during certain activities such as rock climbing, he occasionally would have to adjust his grip because it felt like his wrist needed to be cracked or pushed back into place. A left wrist MRI performed on November 29, 2024, was unremarkable. Dr. Tracy recommended an arthroscopy procedure for further evaluation. On December 3, 2024, NP Tennant treated Mr. Gilbert and noted that the recent MRI of the left wrist was unremarkable and that Dr. Tracy would follow up. On December 16, 2024, Dr. Tracy indicated that the left wrist arthroscopy would be deferred until Mr. Gilbert had recovered from a right wrist surgery and regained better functional use of his right hand. Dr. Tracy requested authorization for a left wrist arthroscopy on February 11, 2025. On February 14, 2025, Dr. Tracy reported that Mr. Gilbert's right wrist had adequately recovered to the point that he could proceed with the left wrist arthroscopy.

On March 6, 2025, Jerry Magone, M.D., performed a medical record review to address the appropriateness of arthroscopic surgery of Mr. Gilbert's left wrist injury. Dr. Magone opined that the allowed conditions in the claim suggest a strain injury, not a sprain. Dr. Magone opined that the requested arthroscopy should not be approved because the compensable condition is a strain and not a sprain; and that there is no support for performing arthroscopic surgery for the allowed diagnosis of a wrist strain.[3] On March 12, 2025, the claim administrator issued an order denying authorization for a left wrist arthroscopy based on Dr. Magone's report. Mr. Gilbert protested this order.

Dr. Tracy authored a progress note dated March 26, 2025, responding to Dr. Magone's report. Dr. Tracy explained that a left wrist arthroscopy is indicated in this case

[3] The left wrist sprain was held compensable in this claim on May 16, 2024. It is unclear whether Dr. Magone was aware that the condition was held compensable.

based on Mr. Gilbert's history, physical exam, lack of improvement with conservative measures, negative MRI, and high index of suspicion for a significant ligamentous injury. Dr. Tracy noted that Mr. Gilbert's left wrist pain was related to a specific incident and had continued despite conservative measures and the passage of time. Dr. Tracy opined that further investigation is warranted in order to determine the appropriate diagnosis because the diagnosis of a simple sprain was no longer appropriate.

Dr. Magone issued an Addendum Report dated May 1, 2025, in response to Dr. Tracy's justification for arthroscopic surgery. Dr. Magone criticized Dr. Tracy's "inconsistent" reasoning and noted the MRI did not reveal a tear. Dr. Magone commented that Dr. Tracy's rationale raises questions regarding the clinical utility of an MRI, and that Dr. Tracy should have reviewed the MRI findings with a radiologist to address the inconsistency between the imaging report and his pre-operative assessment. Dr. Magone alleged that the compensable condition is a wrist strain, not a sprain, and that arthroscopic surgery is not appropriate for strains, which are injuries involving muscle, fascia, and tendons; and that a sprain is a ligament injury.

On May 5, 2025, Mr. Gilbert underwent a left wrist arthroscopy and debridement performed by Dr. Tracy. The post-operative diagnosis was a partial tear of the ulnocarpal ligament of the left wrist. On May 9, 2025, Mr. Gilbert reported minimal postoperative discomfort. On May 13, 2025, Mr. Gilbert presented for a post-op follow-up with Dr. Tracy and he denied any significant pain in his left wrist and hand. The sutures were removed and Dr. Tracy reported that Mr. Gilbert's range of motion and sensations were intact. On May 23, 2025, Dr. Tracy noted that Mr. Gilbert had responded well to the left wrist arthroscopy and that he should remain on light duty work until he was re-evaluated. On June 23, 2025, Dr. Tracy indicated that Mr. Gilbert's left wrist had some instability and that he would benefit from at least one more month of occupational therapy before he could return to full duty work.

Dr. Tracy submitted a Diagnosis Update form dated June 10, 2025, requesting that left wrist pain and a left ulnolunate ligament tear be added as compensable conditions in the claim. In an Acknowledgment of Diagnosis Update Request dated July 24, 2025, the claim administrator stated that the claim is in litigation regarding authorization for arthroscopy of the left wrist; and that a final decision regarding the request to add as a compensable condition a tear of the left wrist ulnolunate ligament would be made once the Board issued a decision regarding authorization for the requested arthroscopy.

On January 28, 2026, the Board reversed the claim administrator's order denying authorization for left wrist arthroscopy. The Board found that Dr. Tracy's request for a left wrist arthroscopy is medically related and reasonably required treatment of the compensable injury. Wheeling 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:
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> (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).

Wheeling argues that the requested left wrist arthroscopy is not medically related or reasonably required to treat the compensable wrist sprain. It argues that Mr. Gilbert's left wrist MRI was unremarkable. Further, Wheeling contends that Dr. Magone explained that Dr. Tracy's reasoning for requesting a left wrist arthroscopy was flawed, as it was unlikely that a scapholunate ligament tear was missed in Mr. Gilbert's left wrist, as it had been in his right wrist. We disagree.

The claim administrator must provide a claimant with medically related and reasonably necessary treatment for a compensable injury. *See* West Virginia Code § 23-4-3 (2005) and West Virginia Code of State Rules § 85-20 (2006).

Here, the Board found that Mr. Gilbert established that the requested left wrist arthroscopy was medically related and reasonably required treatment of the compensable left wrist sprain. The Board noted that the claim administrator held this claim compensable for left wrist sprain on May 16, 2024. The Board also noted that Dr. Magone opined that the left wrist arthroscopy should not be authorized because the claim was found compensable for left wrist strain, not a left wrist sprain, and arthroscopic surgery is not appropriate treatment for a strain injury. The Board further noted Dr. Magone's opinion that the request for arthroscopy is based on Dr. Tracy's hypothesis that, because Mr. Gilbert suffered a tear of his right wrist scapholunate ligament that was not seen on an MRI, the

extent of Mr. Gilbert's left wrist injury likewise may not be fully revealed on an MRI. The Board found Dr. Magone's opinion to be unpersuasive on both points.

The Board determined that Dr. Tracy's authorization request for arthroscopy was not based on the hypothesis described by Dr. Magone. The Board noted that Dr. Tracy's reasoning that a left wrist arthroscopy was indicated was based on Mr. Gilbert's history, a physical exam, a lack of improvement with conservative measures, the negative MRI, and a high index of suspicion for a significant ligamentous injury. The Board found that Dr. Tracy's indication for the surgery for diagnostic purposes was supported by a preponderance of the evidence. Further, the Board found that there is no reliable medical opinion refuting a causal relationship between the compensable injury and the requested arthroscopy.

Upon review, we conclude that the Board was not clearly wrong in finding that Dr. Tracy's request for authorization of a left wrist arthroscopy was medically related and reasonably required treatment of the compensable left wrist sprain. 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 January 28, 2026, order.

Affirmed.

ISSUED: August 27, 2026

CONCURRED IN BY:

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