

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

**MARSHALL COUNTY COAL RESOURCES,
Employer Below, Petitioner**

v.) No. 26-ICA-135 (JCN: 2024007694)

**COLBY YARBROUGH,
Claimant Below, Respondent**

FILED

September 25, 2026

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

MEMORANDUM DECISION

Petitioner Marshall County Coal Resources (“MCCR”) appeals the March 5, 2026, order of the Workers’ Compensation Board of Review (“Board”). Respondent Colby Yarbrough filed a response.¹ MCCR did not reply. The issue on appeal is whether the Board erred in reversing the claim administrator’s order, which denied a request for retroactive authorization of an MRI of the claimant’s left ankle and a request for authorization of surgery for primary repair of the anterior talofibular ligament (“ATFL”).²

This Court has jurisdiction over this appeal pursuant to West Virginia Code § 51-11-4 (2026). 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.

On October 19, 2023, while working for MCCR in an underground coal mine, Mr. Yarbrough sustained an injury to his left ankle when he slipped on a wet rock, rolled his left ankle, and fell. He completed an Employees’ and Physicians’ Report of Occupational Injury or Disease dated October 20, 2023. Gail Nickerson, FNP, at Wheeling Hospital Emergency Department completed the physician’s section of the form and diagnosed Mr. Yarbrough with a left ankle sprain and left ankle pain as the result of an occupational injury.

¹ MCCR is represented by Aimee M. Stern, Esq. Mr. Yarbrough is represented by Sandra K. Law, Esq.

² Note that, as explained below, this case returns to this Court following a prior remand to the Board. *See Marshall County Coal Resources v. Yarbrough*, No. 25-ICA-140, 2025 WL 3486829 (W. Va. Ct. App. Dec. 4, 2025) (memorandum decision).

A left ankle x-ray performed on October 20, 2023, showed no acute bony abnormality. Mr. Yarbrough was placed in an air cast, as he needed stabilization of the ankle, and was discharged from the hospital. On October 25, 2023, Ross Tennant, NP, examined Mr. Yarbrough's left ankle and noted some diffuse edema, resolving ecchymosis, and tenderness over the lateral malleolus and ATFL. NP Tennant noted that Mr. Yarbrough's gait was antalgic, favoring his left side. NP Tennant took Mr. Yarbrough off work and ordered physical therapy.

The claim administrator issued an order dated October 30, 2023, holding the claim compensable for a sprain of an unspecified ligament of the left ankle. Mr. Yarbrough underwent an MRI on November 17, 2023, revealing normal signal and morphology of the ligaments, including the ATFL. The radiologist reported that the cause of Mr. Yarbrough's symptoms was not further defined by the study.

On January 2, 2024, Danny R. Fijalkowski, DPM, examined Mr. Yarbrough, who reported that his ankle was still painful and swelled with activity. Mr. Yarbrough's gait was noted to be antalgic. Dr. Fijalkowski reviewed the MRI and interpreted it as showing an increased signal involving the posterior margin of the subtalar joint and along the anterior lateral aspect of the ankle. However, Dr. Fijalkowski said the MRI did not show any clear evidence of a tendon or ligament tear, fracture, or a talar dome defect. Dr. Fijalkowski noted that Mr. Yarbrough pointed to the lateral and medial aspects of his ankle as the source of his pain. Further, Dr. Fijalkowski noted difficulty in assessing ankle instability due to guarding. Mr. Yarbrough told Dr. Fijalkowski that he had sprained his left ankle multiple times over the years, estimating at least twenty times. Dr. Fijalkowski diagnosed a sprain of the left ankle and left ankle pain of unspecified chronicity. Physical therapy was continued, and an ankle brace was ordered. In a follow-up visit on February 20, 2024, Dr. Fijalkowski noted some progress, and found that the brace helped with stability. However, on examination, some frontal plane laxity was noted, and Mr. Yarbrough reported pain with palpation of the area of the ATFL. Dr. Fijalkowski continued to keep Mr. Yarbrough off work.

Prasadarao Mukkamala, M.D., performed an independent medical examination of Mr. Yarbrough on March 12, 2024. Dr. Mukkamala noted that Mr. Yarbrough acknowledged that he had multiple sports-related injuries to his left ankle in the past. Upon examination, Dr. Mukkamala noted that Mr. Yarbrough walked with a limp on the left. Dr. Mukkamala placed Mr. Yarbrough at maximum medical improvement ("MMI") for the injury and opined that he should be able to return to work, although he needed to continue wearing the brace at work.

On March 26, 2024, Mr. Yarbrough returned to see Dr. Fijalkowski, who noted frontal plane laxity and pain in and around the foot and ankle, including the area of the left ATFL. Dr. Fijalkowski continued physical therapy, the use of the ankle brace, and kept

Mr. Yarbrough off work. An x-ray of the left tibia-fibula, performed on April 19, 2024, revealed no acute abnormality.

Mr. Yarbrough followed up with Dr. Fijalkowski on June 4, 2024. Pain responses were similar to those in previous visits, and Dr. Fijalkowski observed that Mr. Yarbrough continued to have an antalgic gait. Dr. Fijalkowski reviewed the MRI from 2023 and noted that it showed significant fluid along the ATFL. Dr. Fijalkowski ordered a repeat study to check the status of the ligament. The repeat MRI, performed on June 21, 2024, as read by the radiologist, revealed intact lateral ankle ligaments, but a likely prior lateral ankle sprain with attenuation of the intact ATFL was noted. No evidence of bony edema or fracture was seen. On July 15, 2024, Mr. Yarbrough told Dr. Fijalkowski that his ankle felt weak, unstable, and as if it was going to give out. He reported that he had minimized his activity, and he continued to have significant pain at times. Dr. Fijalkowski again noted that Mr. Yarbrough walked with an antalgic gait. Dr. Fijalkowski assessed a sprain of the ATFL of the left ankle, and he discussed a surgical repair of the ligament in combination with platelet-rich plasma. On July 29, 2024, Dr. Fijalkowski completed a Diagnosis Update requesting that the sprain of ATFL in the left ankle be added as a compensable condition in the claim.

On August 1, 2024, the claim administrator issued an order denying Dr. Fijalkowski's request to add a sprain of ATFL of the left ankle to the claim. The claim administrator also denied a retroactive request for authorization of an MRI of the left ankle and surgery for repair of the ATFL of the left ankle. The claim administrator noted that retroactive authorization is not allowed, and that the diagnosis update and surgery were denied based on Dr. Mukkamala's report. Mr. Yarbrough protested this order.

Mr. Yarbrough underwent a repair of a disrupted ATFL on the left, performed by Dr. Fijalkowski on August 22, 2024. The postoperative diagnosis was a sprain of ATFL on the left. In his operative notes, Dr. Fijalkowski indicated that the ATFL was "thickened with hypertrophic granulation," which was excised. The ligament was sutured, and the ankle and foot were noted to have no range of motion restriction or laxity.

On November 6, 2024, Ronald J. Fadel, M.D., performed a record review and opined that Mr. Yarbrough sustained a sprain of the ATFL of the left ankle as a result of the work injury. However, Dr. Fadel concluded that the updated MRI and surgery were not medically related to or reasonably required as a result of Mr. Yarbrough's work injury. Dr. Fadel noted that Mr. Yarbrough had a prior history of multiple left ankle sprains. Dr. Fadel also noted that in March of 2024, Dr. Mukkamala found that Mr. Yarbrough did not require any further treatment for the work injury. Dr. Fadel opined that Dr. Fijalkowski performed a ligamentous reconstruction rather than a repair of a tear and that there was no evidence of an acute tear, which would support a work injury. Thus, Dr. Fadel opined that the surgery was "elective" and performed in order to reduce the ligamentous laxity caused by the prior

repetitive sprains. The repeat MRI, Dr. Fadel added, was only necessary for operative planning.

Previously, on March 6, 2025, the Board reversed the claim administrator's order and held the claim compensable for ATFL of the left ankle. In addition, the Board also reversed the claim administrator's denial of the MRI and left ankle surgery, finding that the treatments were reasonable, necessary, and related to the compensable injury. MCCR only appealed the Board's authorization of treatment. On December 4, 2025, this Court vacated the Board's order and remanded the claim to the Board for further analysis as it did not address Dr. Fadel's report.

Upon remand, on March 5, 2026, the Board again reversed the claim administrator's order which denied a request for retroactive authorization of an MRI of the claimant's left ankle and a request for authorization of surgery for primary repair of the ATFL. The Board found that Mr. Yarbrough established that the repeat MRI of his left ankle on June 21, 2024, and the surgery performed on August 22, 2024, are medically related and were reasonably required for treatment of the compensable injury. MCCR 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:

- (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).

MCCR argues that the Board's conclusion is a mischaracterization of Dr. Fijalkowski's treatment notes. MCCR notes that, although Dr. Fijalkowski ordered the

MRI and performed the surgery, he failed to explicitly state that Mr. Yarbrough's compensable sprain injury caused his need for surgery in his notes. Further, MCCR argues that the Board erred in discrediting Dr. Fadel's conclusion that the surgery Dr. Fijalkowski performed was not directed toward Mr. Yarbrough's compensable sprain injury. Finally, MCCR argues that the Board's authorization of surgery for treatment of a compensable sprain injury is contrary to Code of State Rules § 85-20 (2006) ("Rule 20"), and no evidence has been submitted to indicate this is an extraordinary claim to justify deviation from these guidelines. We disagree.

Here, the Board found that Dr. Fijalkowski's opinion that the MRI and surgery are medically related and reasonably required to treat the compensable injury was persuasive. Further, the Board gave deference to Dr. Fijalkowski's opinion because he is Mr. Yarbrough's treating physician and, thus, would be the most familiar with his condition. The Board noted that Dr. Mukkamala concluded that Mr. Yarbrough had reached MMI, despite the fact that he complained of pain in all planes of motion and walked with a limp on the left side. The Board further noted that Dr. Fadel indicated that there was no new pain or swelling of Mr. Yarbrough's ankle, and he failed to acknowledge that the symptoms persisted after the conservative treatment. The Board found that Dr. Fijalkowski documented Mr. Yarbrough's ongoing symptoms and determined surgery was needed to resolve them. Finally, the Board noted that the condition for which Dr. Fijalkowski requested the MRI and surgery, sprain of the left ATFL, is now compensable, which was not the case when Drs. Mukkamala and Fadel rendered their opinions.

We find no merit in MCCR's argument that the requested treatment was excessive under Rule 20's guidelines. The Board noted that Mr. Yarbrough received conservative treatment for compensable injury and he continued to have symptoms. The record reflects treatment that included physical therapy and bracing, followed by continuing complaints of pain and instability. Further, the Board found persuasive the opinion of Mr. Yarbrough's treating physician, Dr. Fijalkowski, that the MRI and surgery are medically related and reasonably required to treat the compensable injury.

Upon review, we conclude that the Board was not clearly wrong in finding that Mr. Yarbrough established that the repeat MRI of his left ankle on June 21, 2024, and the surgery performed on August 22, 2024, are medically related and were reasonably required for treatment of the compensable injury. Further, the Board was not clearly wrong in giving deference to Dr. Fijalkowski's opinion, as he is Mr. Yarbrough's treating physician and was the most familiar with his condition. 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 March 5, 2026, order.

Affirmed.

ISSUED: September 25, 2026

CONCURRED IN BY:

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