

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

**ACNR RESOURCES, INC.,
Employer Below, Petitioner**

v.) No. 26-ICA-156 (JCN: 2024009153)

**PAUL SCOTT,
Claimant Below, Respondent**

FILED
September 25, 2026
ASHLEY N. DEEM, CHIEF DEPUTY CLERK
INTERMEDIATE COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner ACNR Resources, Inc. (“ACNR”) appeals the March 20, 2026, order of the Workers’ Compensation Board of Review (“Board”), which found Respondent Paul Scott’s request for a left shoulder hemiarthroplasty was in the course of treatment for his compensable left shoulder injury and remanded this claim to the claim administrator to grant temporary total disability (“TTD”) benefits from the date of Mr. Scott’s suspension and thereafter as substantiated by evidence. Mr. Scott filed a response.¹ ACNR did not file a reply.

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 31, 2023, Mr. Scott was working as a maintenance mechanic and electrician for ACNR when he tripped and fell while carrying items and landed on his left elbow. On November 5, 2023, Mr. Scott sought medical treatment at MedExpress, and he was diagnosed with a sprain of the left shoulder. Mr. Scott reported that he experienced burning in the front of his left shoulder that radiated up into his neck after the fall and that his elbow did not hurt. An x-ray was performed and showed significant narrowing and degenerative spurring of the glenohumeral joint, including the glenoid margin and humerus. On that same date, Mr. Scott signed an Employees’ and Physicians’ Report of Occupational Injury or Disease stating he injured his left shoulder on October 31, 2023, when he tripped and fell to the ground, hitting his left elbow. The physician’s portion was completed by medical personnel at MedExpress and stated Mr. Scott suffered a left

¹ ACNR is represented by Aimee M. Stern, Esq. Mr. Scott is represented by J. Thomas Greene, Jr., Esq., and T. Colin Greene, Esq.

shoulder sprain as a direct result of an occupational injury. On November 15, 2023, the claim administrator held this claim compensable for an unspecified sprain of an unspecified shoulder joint.

On November 28, 2023, Mr. Scott underwent an MRI of his left shoulder, which showed advanced glenohumeral osteoarthritis with small joint effusion containing multiple joint bodies and debris; severe rotator cuff tendinopathy, full-thickness, partial width tearing of the anterior insertional fibers of the supraspinatus; and no significant muscular atrophy. On December 4, 2023, Lawrence Witzberger, PA-C, examined Mr. Scott at Wheeling Hospital Orthopedic and diagnosed him with osteoarthritis of the left shoulder and a traumatic tear of the left rotator cuff. It was noted that Mr. Scott's case was complicated by the level of arthritis in the shoulder, and he was referred to physical therapy.

On December 8, 2023, Mr. Scott underwent an initial examination at Trans-Medical Services physical therapy, and the primary concerns were listed as left shoulder pain, joint edema with passive range of motion, active range of motion, and poor strength. The assessment was left shoulder pain secondary to trauma resulting in a full thickness tear of the supraspinatus limiting his range of motion and strength. On January 4, 2024, Mr. Scott was seen by Michael J. Rytel, M.D., for a second opinion regarding his left shoulder injury.² Dr. Rytel diagnosed primary osteoarthritis in the left shoulder and a traumatic complete tear of the left rotator cuff. Dr. Rytel reported that the osteoarthritis predated the work injury, but Mr. Scott denied experiencing any prior left shoulder symptoms in his left shoulder prior to his fall at work. In order for Mr. Scott to continue working, Dr. Rytel opined that Mr. Scott would require optimal function and that a repair of the rotator cuff would likely be of no value without performing a shoulder arthroplasty at the same time. Dr. Rytel opined that the need for both surgeries would be related to Mr. Scott's work accident.

At the request of the claim administrator, Mr. Scott underwent an independent medical evaluation ("IME") performed by Robert L. Waltrip, M.D., on March 11, 2024. Dr. Waltrip opined that Mr. Scott had an easily repairable left rotator cuff tear and was symptomatic both from the rotator cuff tear and the underlying severe glenohumeral arthritis. He noted it would be reasonable to repair the left rotator cuff and proceed with either a hemiarthroplasty or total shoulder replacement. Dr. Waltrip added that "[t]he need for rotator cuff repair and hemiarthroplasty or total shoulder replacement with an anatomic prosthesis would be related at least in part to the vocational injury of October 31, 2023 [sic]

² ACNR submitted an operative report by Dr. Rytel dated May 6, 2016, concerning a right shoulder hemiarthroplasty performed on Mr. Scott. The post-operative diagnosis was right shoulder end-stage osteoarthritis with a supraspinatus tendon tear. Mr. Scott saw Dr. Rytel on December 8, 2016, after his right shoulder hemiarthroplasty, and Mr. Scott reported he now considered his right shoulder to be his good shoulder.

based on the history from Mr. Scott.” Dr. Waltrip also found that Mr. Scott had not reached maximum medical improvement (“MMI”).

On April 1, 2024, Dr. Waltrip issued an addendum report now stating that “[t]he hemiarthroplasty or total shoulder replacement would be directed toward the patient’s underlying severe glenohumeral arthritis” and that it is “difficult to relate the need for hemiarthroplasty or total shoulder replacement surgery specifically to the workplace injury.” Dr. Waltrip noted that Mr. Scott had arthritis prior to his compensable injury and experienced preexisting, intermittent pain for which he was taking anti-inflammatory medication. Dr. Waltrip noted that an MRI of the left shoulder dated November 28, 2023, showed advanced arthritis with a small-to-moderate joint effusion and did not show a traumatic injury to the articular cartilage, fracture, or other structural changes to alter the natural history of the underlying arthritic condition. On April 10, 2024, the claim administrator authorized a left shoulder rotator cuff repair and twenty-eight sessions of physical therapy.

On April 17, 2024, Mr. Scott presented for a follow-up with Dr. Rytel. Because of Mr. Scott’s left shoulder osteoarthritis, Dr. Rytel opined that an arthroplasty and a repair of the rotator cuff would provide Mr. Scott with the best outcome. Dr. Rytel noted Mr. Scott continued to have significant pain, especially when reaching or lifting away from the body, and indicated Mr. Scott would like to proceed with surgery. On May 1, 2024, Dr. Rytel performed a left shoulder arthroscopy that included an extensive debridement of the supraspinatus and subscapularis tendons, extensive labral debridement circumferentially, a bursectomy, and an intraarticular injection of corticosteroid. The postoperative diagnoses were a left shoulder partial thickness rotator cuff tear, extensive tearing of the labrum circumferentially, a partial subscapularis tear, and osteoarthritis with a large effusion. Dr. Rytel stated the glenohumeral articular surfaces showed eburnated bone devoid of articular cartilage. Dr. Rytel noted that he did not repair the tear because of the severity of the arthritis and noted he was concerned that the repair and the immobilization would cause further stiffness and exacerbate the osteoarthritis. At follow-up appointments with Dr. Rytel from May of 2024 through July of 2024, Dr. Rytel advised Mr. Scott that he would ultimately require a total shoulder arthroplasty and noted that Mr. Scott had reasonably good range of motion with pain at the end range in both active and passive motion. Mr. Scott reported that he felt a bit better post-surgery and his left shoulder moved a little more smoothly, he had a little more strength, and his range of motion improved.

On August 19, 2024, Dr. Waltrip performed a second IME and opined that Mr. Scott did not need any further care or treatment for his compensable injury. Dr. Waltrip stated that Mr. Scott’s current symptoms were related to his unrelated preexisting severe left shoulder glenohumeral arthritis and that any further treatment would be unrelated to the compensable injury. Dr. Waltrip disagreed with Dr. Rytel’s suggestion that the compensable injury aggravated the preexisting arthritis. Dr. Waltrip reported that Mr. Scott sustained no fracture, dislocation, or acute cartilage injury that could have aggravated the

arthritis and opined that Mr. Scott would have required a left shoulder hemiarthroplasty even in the absence of the compensable injury.

On August 28, 2024, the claim administrator issued two orders. The first order denied Mr. Scott's request for hemiarthroplasty shoulder surgery based on the August 19, 2024, report of Dr. Waltrip. The second order stated Mr. Scott's TTD benefits would be closed in thirty days unless additional evidence was received because Dr. Waltrip's report dated August 19, 2024, placed Mr. Scott at MMI for the compensable injury. On October 7, 2024, the claim administrator held that Mr. Scott failed to submit additional evidence to substantiate the continuation of his TTD benefits and closed his claim. Mr. Scott protested these two orders to the Board.

Mr. Scott was deposed on November 4, 2024, and testified that his left shoulder hemiarthroplasty was scheduled for December 20, 2024. Mr. Scott testified that he had no previous problems with his left shoulder, was able to perform his duties with relative ease, and had never received medical treatment for his left shoulder prior to his workplace injury. He further testified that the anti-inflammatory medication he was taking for a few years prior to the compensable injury, and which was referenced by Dr. Waltrip, was not related to his left shoulder, but instead was to treat his knees.

On April 1, 2025, the Board entered a decision affirming the claim administrator's order dated August 28, 2024, and held that Mr. Scott failed to establish that his request for a left shoulder hemiarthroplasty was required to treat his compensable injury. Next, on April 16, 2025, the Board entered an order affirming the claim administrator's order dated October 7, 2024, and held Mr. Scott failed to establish that he was entitled to TTD benefits after August 28, 2024. Mr. Scott appealed both of these orders to this Court, the cases were consolidated, and this Court vacated and remanded both orders in a memorandum decision entered on December 22, 2025. This Court found that the Board failed to reference relevant case law, make credibility determinations, or provide a sufficient analysis of the evidence in the record. *See Scott v. ACNR Res., Inc.*, No. 25-ICA-175, 2025 WL 3708949 (W. Va. Ct. App. Dec. 22, 2025) (memorandum decision).

On March 20, 2026, the Board entered an order finding Mr. Scott's request for a left shoulder hemiarthroplasty was in the course of treatment for his compensable left shoulder injury and remanded this claim to the claim administrator to grant TTD benefits from the date of Mr. Scott's suspension and thereafter as substantiated by evidence. It is from this order that ACNR 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, ACNR asserts four assignments of error. First, it argues the Board mischaracterized Dr. Waltrip's opinions because he did not state that the need for a left shoulder hemiarthroplasty was due, at least in part, to the compensable injury. Specifically, ACNR argues that Dr. Waltrip's April 1, 2024, addendum was meant to clarify treatment recommendations and was not a reversal of his initial opinion. We disagree. Dr. Waltrip stated in his initial report dated March 11, 2024, that "[t]he need for rotator cuff repair and hemiarthroplasty or total shoulder replacement with an anatomic prosthesis would be related at least in part to the vocational injury of October 31, 2023 [sic] based on the history from Mr. Scott." However, his addendum report dated April 1, 2024, now opined that the left shoulder hemiarthroplasty would be directed toward Mr. Scott's underlying severe glenohumeral arthritis and not his compensable injury.

In this case, the Board classified this addendum report as a reversal of Dr. Waltrip's initial opinion and found that Dr. Waltrip's change of mind was deemed less credible than Dr. Rytel's consistent opinion that the hemiarthroplasty was medically related to and reasonably required medical treatment for the compensable injury. ACNR argues on appeal that the April 1, 2024, addendum meant to clarify that the need for rotator cuff repair was the "part" related to Mr. Scott's workplace injury and that Dr. Waltrip's initial report was a mistake. The two reports are materially different regarding the causal relationship between the compensable injury and the proposed arthroplasty. The Board considered the difference and was entitled to determine the weight of the competing medical opinions. We find no error in the Board's characterization of the evidence and decline to disturb its credibility determinations. See *Martin v. Randolph Cnty. Bd. of Educ.*, 195 W. Va. 297, 306, 465 S.E.2d 399, 408 (1995) ("We cannot overlook the role that credibility places in factual determinations, a matter reserved exclusively for the trier of fact. We must defer to the ALJ's credibility determinations and inferences from the evidence . . .").

For its second and third assignments of error, consolidated for clarity, ACNR argues the Board erred in failing to address the discrepancy between Mr. Scott's statements that his preexisting end stage osteoarthritis was asymptomatic prior to the date of injury, Dr. Rytel's notes that his opinions were based solely upon those statements, and Mr. Scott's statement that his right shoulder was now considered his good shoulder following his right shoulder hemiarthroplasty documented in Dr. Rytel's December 8, 2016, office note. ACNR further argues that the Board's finding that Mr. Scott's left shoulder was asymptomatic is inconsistent with the level of osteoarthritis found in his shoulder and his use of medication to treat arthritis prior to the date of the compensable injury. We disagree. 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). 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). Also, this Court held that "*Gill* unambiguously held that a discrete new injury may be compensable when it arises from an aggravation of a preexisting injury." *Blackhawk Mining, LLC v. Argabright*, 251 W. Va. 549, 552, 915 S.E.2d 7, 10 (2023), *aff'd*, No. 23-381, 2024 WL 3984505 (W. Va. Aug. 27, 2024) (memorandum decision). "When read in unison, *Gill* and *Moore* do not render preexisting injuries compensable. Compensability is limited only to discrete new injuries and disabilities that manifest following the compensable injury." *Id.*

In this case, the Board found that the evidence established that Mr. Scott had severe arthritis in his left shoulder that pre-existed his compensable injury, but he testified that he did not have any problems performing his work, had no injuries to his left shoulder, and did not receive any treatment for his left shoulder prior to his compensable injury.

Following the more recent injury, the Board noted that Mr. Scott developed limited and painful range of motion in his left shoulder; received treatment including a left shoulder arthroscopy and extensive debridement; underwent multiple follow-up visits and physical therapy; and has been unable to work since September 19, 2024, due to chronic left shoulder pain. Based on these facts, the Board found Mr. Scott's testimony to be credible and further found that the nature of Mr. Scott's compensable injury, combined with his preexisting arthritis, resulted in distinctly new symptomatic disabilities as a normal consequence of his work injury.

ACNR challenges these findings because it argues that Mr. Scott referred to his right shoulder as his good shoulder following his right shoulder hemiarthroplasty in Dr. Rytel's December 8, 2016, office note, because the level of osteoarthritis found in his left shoulder was so severe, and because Mr. Scott was prescribed medication to treat arthritis prior to the date of the compensable injury. However, ACNR's arguments are devoid of evidentiary support, and it has failed to provide evidence to show that the Board erred in finding Mr. Scott's testimony credible. "[U]nless the evidence compels a contrary finding, the Board's reliance on certain medical reports and opinions over others is entitled to considerable deference." *Arch Coal, Inc. v. Howard*, 251 W. Va. 543, 547, 915 S.E.2d 1, 5 (2025). ACNR has failed to show that the Board's reliance on Mr. Scott's testimony and certain medical records over others is clearly wrong, and we defer to the Board's findings. As a result, ACNR's second and third assignments of error fail.

Finally, ACNR argues the Board erred in reinstating Mr. Scott's TTD benefits based upon its authorization of the left shoulder hemiarthroplasty and in concluding that Mr. Scott's compensable injury had not reached MMI in light of his objective improvement in both range of motion and strength following the arthroscopic surgery. Again, we disagree. The Board correctly noted that Dr. Waltrip's finding of MMI was premature because a hemiarthroplasty was scheduled after the date of his report and no subsequent medical evidence indicates Mr. Scott was found at MMI. Further, ACNR has failed to provide a medical opinion to support its arguments and seeks to overturn the Board's findings based only on its own interpretation of the medical records. In this case, "[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 and without any medical evidence to the contrary, we cannot conclude that the Board was clearly wrong in remanding this case to the claim administrator to grant TTD benefits as substantiated by evidence.

Accordingly, we affirm the Board's March 20, 2026, order.

Affirmed.

ISSUED: September 25, 2026

CONCURRED IN BY:

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