

**STATE OF WEST VIRGINIA**

**SUPREME COURT OF APPEALS**

**FILED**

October 7, 2015

RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

**PAMELA L. CALLISON,  
Claimant Below, Petitioner**

vs.) **No. 14-1280** (BOR Appeal No. 2049680)  
(Claim No. 2014002801)

**GREENBRIER HOTEL CORPORATION,  
Employer Below, Respondent**

**MEMORANDUM DECISION**

Petitioner Pamela L. Callison, by Patrick K. Maroney, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Greenbrier Hotel Corporation, by Gary W. Nickerson and James W. Heslep, its attorneys, filed a timely response.

This appeal arises from the Board of Review's Final Order dated November 19, 2014, in which the Board affirmed a July 23, 2014, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's November 1, 2013, decision denying a request for a diagnostic right shoulder arthroscopy with possible labral repair and distal clavicle resection. The Court has carefully reviewed the records, written arguments, and appendices contained in the briefs, and the case is mature for consideration.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Rules of Appellate Procedure.

Ms. Callison, a waitress, was injured in the course of her employment on July 24, 2013, while pushing and twisting a heavy table. The claim was held compensable for overexertion from sudden strenuous movement and sprain/strain of the shoulder and upper arm. Ms. Callison was treated for her right shoulder prior to the compensable injury. Treatment notes by Joe Pack, M.D., from December 2011 through June 2013, show that she was treated for right shoulder pain/discomfort. She was diagnosed with acromioclavicular joint arthrosis and localized primary osteoarthritis of the right shoulder and given several injections in the shoulder. Surgery was

recommended to treat the right shoulder condition, and Ms. Callison was interested in scheduling it in the fall of 2013. Following the compensable injury, Dr. Pack stated in a treatment note that he previously treated Ms. Callison for her right acromioclavicular joint. She also had a prior surgery on her left shoulder. An MRI showed tears of the anterior and superior glenolabrum, moderate degenerative changes of the acromioclavicular joint, and a small ossific density in the joint. He diagnosed labral tear of the right shoulder and localized primary osteoarthritis of the right shoulder acromioclavicular joint. He stated that looking at the MRI, the labral tear appears to be more intrasubstance and degenerative in nature. He also stated that surgery could help the labral pain but would likely not improve the anterior glenohumeral pain. Also, he opined that this was more of a muscle strain that would be aided by physical therapy.

An independent medical evaluation was performed by Prasadarao Mukkamala, M.D., on September 18, 2013, in which he recommended that the request for surgery on the right shoulder be denied. He stated that Ms. Callison had treatment for her right shoulder and elbow for a significant period of time prior to the compensable injury. He noted that one month prior to the compensable injury, Dr. Pack's treatment notes state that she was very interested in right shoulder surgery in the fall. Dr. Mukkamala concluded that the surgery for which authorization is currently being sought was planned prior to the date of injury, and all of the degenerative changes seen on the MRI were pre-existing.

The StreetSelect Grievance Board also recommended denying the requested surgery. It determined that the claim is compensable for shoulder and upper arm sprain/strain. Ms. Callison was receiving treatment for her right shoulder prior to the compensable injury, and the requested surgery was planned at least a month prior to the compensable injury. The Board noted that correspondence from Dr. Pack stated that Ms. Callison's pre-existing condition was made worse by the fall and necessitated her need for surgery. However, the Board found that the information from Dr. Pack was new and inconsistent with the history provided. There was no information that Ms. Callison suffered a fall. She sustained a minor sprain/strain caused by pushing or pulling a cart.

The claims administrator denied a request for a diagnostic right shoulder arthroscopy with possible labral repair and distal clavicle resection. The Office of Judges affirmed the decision in its July 23, 2014, Order. It found that the claim has only been held compensable for a sprain of the right shoulder, and the requested surgery is not medically related or reasonably required to treat the sprain. Dr. Pack requested a right shoulder arthroscopy with possible labral tear repair and distal clavicle resection. The Office of Judges determined that the evidence shows that the distal clavicle resection is to treat the degenerative changes. Dr. Pack's reports were also found to state that Ms. Callison presented with right shoulder pain a year before the compensable injury occurred and was diagnosed with acromioclavicular joint arthrosis. A report dated approximately a month and a half before the compensable injury states that she was interested in having surgery on her right shoulder in the fall. The evidence was concluded to establish that Ms. Callison has pre-existing osteoarthritis in both shoulders for which she underwent distal clavicle resection on the left shoulder with plans to have the same procedure on the right. Dr. Mukkamala's report was determined to support this conclusion as he also stated that the

condition was pre-existing and the distal clavicle resection was planned before the compensable injury occurred.

The Office of Judges further determined that the labral tear repair is not necessary to treat the compensable injury. Dr. Pack stated in an August 20, 2013, treatment note, upon which the request for authorization of the surgery was based, that the labrum tear “is more intrasubstance, degenerative type.” Dr. Pack did state that the mechanism of injury could have caused the tear and that the pathology of the injury was different than what Ms. Callison experienced in the past. He believed this was a new finding based on the MRI and description of the injury. However, the Office of Judges found that Dr. Pack referred to the compensable injury as a fall. Ms. Callison’s compensable injury was in fact the result of pushing and twisting a table. The remainder of the record does not mention a fall and there was no explanation of Dr. Pack’s reference to a fall. Therefore, the labral pathology was found to be associated with a mechanism of injury that was inconsistent with the compensable injury. Further, labral tear has not been requested as an additional compensable component of the claim, nor has it been held to be a compensable condition in the claim. The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its Order on November 19, 2014.

On appeal, Ms. Callison argues that though she had pre-existing acromioclavicular joint arthrosis, the compensable injury caused tears of the tendons. She asserts that she has performed repetitive motion with her right shoulder for twenty-seven years in the course of her employment, and the overuse contributed to her acromioclavicular joint arthrosis. Greenbrier Hotel Corporation argues that Ms. Callison had significant pre-existing right shoulder conditions. It asserts that the requested surgery is not necessary for the compensable sprain/strain and is instead for the treatment of the pre-existing arthrosis.

After review, we agree with the reasoning of the Office of Judges and the conclusions of the Board of Review. Ms. Callison has failed to establish that the requested surgery is medically related and reasonably required to treat her compensable injury. The only condition that has been held compensable in this case is right shoulder/upper arm sprain/strain. The requested surgery has been established to be necessary for the treatment of pre-existing conditions and not the compensable injury.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of any constitutional or statutory provision, nor is it clearly the result of erroneous conclusions of law, nor is it based upon a material misstatement or mischaracterization of the evidentiary record. Therefore, the decision of the Board of Review is affirmed.

Affirmed.

**ISSUED: October 7, 2015**

**CONCURRED IN BY:**

Chief Justice Margaret L. Workman

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Allen H. Loughry II

**DISSENTING:**

Justice Menis E. Ketchum