

**STATE OF WEST VIRGINIA**  
**SUPREME COURT OF APPEALS**

**QUINCE FRIEL,**  
**Claimant Below, Petitioner**

vs.) **No. 17-0381** (BOR Appeal No. 2051683)  
(Claim No. 2014014608)

**SNOWSHOE MOUNTAIN, INC.,**  
**Employer Below, Respondent**

**FILED**  
November 22, 2017  
EDYTHE NASH GAISER, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

**MEMORANDUM DECISION**

Mr. Friel seeks authorization for a total knee replacement. On December 16, 2015, the claims administrator denied Mr. Friel's request for total knee replacement surgery. The Workers' Compensation Office of Judges affirmed the claims administrator's decision in a Final Order dated November 15, 2016. This appeal arises from the Board of Review's Order dated March 21, 2017, in which the Board affirmed the November 15, 2016, Order of the Office of Judges. The Court has carefully reviewed the records, written arguments, and appendices contained in the briefs, and the case is mature for consideration. 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, we affirm the decision of the Board of Review.

Mr. Friel sustained a workplace injury on October 11, 2013, when he fell into a hole on a deck. The claims administrator held the claim compensable for left knee sprain/strain on November 14, 2013. Mr. Friel treated with John W. Eilers, D.O., from October 11, 2013, through December 16, 2013. Dr. Eilers diagnosed a left knee sprain/strain. Mr. Friel was referred to Christopher Courtney, M.D., for an orthopedic consultation.

Dr. Courtney examined Mr. Friel on February 20, 2014, and ordered x-rays of Mr. Friel's left knee. The February 20, 2014, x-ray report revealed mild degenerative changes to the left knee. Mr. Friel was diagnosed with a sprain of the MCL, and an MRI of the left knee was ordered. The March 28, 2014, MRI report revealed degenerative changes of the knee, and a posterior horn medial meniscus tear. Mr. Friel returned to Dr. Courtney on April 24, 2014, and Dr. Courtney again diagnosed Mr. Friel with a sprain of the MCL, but noted that he was suffering from osteoarthritis of the left knee. Dr. Courtney referred Mr. Friel for additional x-rays of the left knee, which were obtained on June 4, 2014. Dr. Courtney interpreted the x-rays to

show mild osteoarthritis at the medial joint space including mild marginal osteophytes present around the medial tibia and femoral condyle and osteophyte present at the patella. Dr. Courtney discussed arthroscopy with Mr. Friel to correct the meniscus tear versus a total knee replacement. Dr. Courtney noted that a knee arthroscope would likely create increasing pain and continued complaints secondary to the pre-existing osteoarthritis.

Mr. Friel was referred to Joseph Grady, M.D., for an independent medical examination. Dr. Grady diagnosed Mr. Friel with a resolved left knee sprain and left knee internal derangement with medial meniscus tear on MRI superimposed on degenerative changes. Dr. Grady stated that the mechanism of injury described by the event that occurred on October 11, 2013, was consistent with a medial meniscus injury. However, Dr. Grady believed the muscular sprain and strain had resolved and was not causing any lasting symptoms. Dr. Grady also stated that the MCL strain could have potentially resulted from the injury. Dr. Grady could not relate the osteoarthritis found to the work-related injury, and deemed it a pre-existing condition. Dr. Grady further concluded that arthroscopic surgery with a partial medial meniscectomy would be the typical utilized standard of care for treating a medial meniscus tear. Based upon the conclusions of Dr. Grady, the claims administrator added medial meniscus tear of the left knee and MCL sprain as compensable conditions in this claim on August 31, 2015.

Mr. Friel continued to conservatively treat his condition. Dr. Courtney referred Mr. Friel to Joseph Fazalare, M.D., for a second opinion. Dr. Fazalare agreed with Dr. Courtney's recommendation for a total knee replacement versus arthroscopy to correct the meniscus tear due to Mr. Friel's pre-existing osteoarthritis. In a report dated November 18, 2015, Dr. Fazalare stated, "[w]e have had some success with doing knee arthroscopy in the face of arthritic changes; however, I think definitive care-wise, a total knee arthroplasty is the best course of action. He may get some relief from the knee scope, but I do not think it would be permanent, and it may speed up his posttraumatic arthritis."

On December 16, 2015, the claims administrator issued an Order denying the request for total knee replacement surgery. The claims administrator denied the request because the treatment was being requested to treat conditions not allowed in the workers' compensation claim. The only recognized conditions in the claim were medial meniscus tear of the left knee, MCL sprain and left knee sprain. Mr. Friel protested the decision of the claims administrator.

By Decision dated November 15, 2016, the Office of Judges affirmed the December 16, 2015, Order denying the request for a total left knee replacement. The Office of Judges acknowledged that meniscal tear and MCL strain were added to claim, but noted that osteoarthritis had not been added as a compensable component of the claim. Both Drs. Courtney and Fazalare requested total knee replacement over arthroscopy because of Mr. Friel's pre-existing osteoarthritis. Dr. Grady did not attribute Mr. Friel's osteoarthritis to the injury, and stated that arthroscopy was the appropriate treatment for a meniscal tear repair.

The Office of Judges concluded that a preponderance of the evidence fails to demonstrate that the requested total knee replacement is medically related and reasonably necessary to treat the compensable injury. The Board of Review accepted the findings of the Office of Judges and

affirmed its Decision on March 21, 2017. On Appeal, Mr. Friel, by J. Thomas Green Jr, his attorney, argues that the only reasonable treatment is for a total knee replacement, as recommended by Dr. Fazalare. Snowshoe Mountain, Inc., by Jeffrey B. Brannon, its attorney, asserts that Dr. Fazalare's request for surgery was to treat Mr. Friel's pre-existing osteoarthritis. The evidence of record suggests that Dr. Fazalare requested a total left knee replacement to also treat Mr. Friel's pre-existing osteoarthritis. Dr. Grady noted the appropriate treatment for a meniscus tear is arthroscopic repair. The Board of Review properly affirmed the Decision of the Office of Judges.

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: November 22, 2017**

**CONCURRED IN BY:**

Chief Justice Allen H. Loughry II  
Justice Robin J. Davis  
Justice Margaret L. Workman  
Justice Menis E. Ketchum  
Justice Elizabeth D. Walker