

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

RICHARD W. CROUSE,
Claimant Below, Petitioner

vs.) **No. 17-0450** (BOR Appeal No. 2051470)
(Claim No. 2011001248)

JKM ENTERPRISES, INC., LWF,
Employer Below, Respondent

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

MEMORANDUM DECISION

Mr. Crouse requests the addition of osteoarthritis of the right knee as a compensable component of his claim for workers' compensation benefits. The claims administrator denied Mr. Crouse's request on February 22, 2016. The Office of Judges affirmed the claims administrator's decision on August 2, 2016. This appeal arises from the Board of Review's Final Order dated April 26, 2017, in which the Board affirmed the Order of the Workers' Compensation 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. Crouse injured his right knee while crawling under a house on July 6, 2010, in the course of his employment with JKM Enterprises. Mr. Crouse's claim for workers' compensation benefits was held compensable for a right knee sprain/strain on July 15, 2010. On July 26, 2010, a right knee MRI revealed the presence of lateral and medial meniscus tears.¹ On September 24, 2010, Mr. Crouse underwent a meniscectomy and chondroplasty to repair the meniscus tears.

On September 26, 2014, Mr. Crouse sought treatment with Pablo Carpio, M.D., his primary care physician, for complaints of right knee pain following an injury which occurred on September 24, 2014. On October 2, 2014, Mr. Crouse sought treatment at MedExpress for right knee pain following a work-related injury which occurred several days prior when Mr. Crouse twisted his right knee while descending a ladder. He reported that he has occasionally

¹ The record does not contain any evidence indicating that the diagnoses of lateral and medial meniscus tears were added as compensable components of the claim.

experienced right knee problems following the 2010 meniscus repair. Mr. Crouse was diagnosed with a right knee sprain.

On October 14, 2014, Robert Kropac, M.D., examined Mr. Crouse. Dr. Kropac noted that he initially treated Mr. Crouse following the July 6, 2010, injury. He further noted that Mr. Crouse sustained an intervening injury approximately two weeks prior. He noted that diagnostic imaging revealed the presence of degenerative changes and diagnosed Mr. Crouse with a recurrent medial meniscus tear. Dr. Kropac evaluated Mr. Crouse for a second time on December 17, 2014. He noted that a right knee arthrogram performed on December 10, 2014, revealed severe articular cartilage loss in the lateral compartment, subchondral cysts, and a new partial tear of the lateral collateral ligament. He then opined that the findings revealed via the arthrogram are related to the July 6, 2010, injury and diagnosed Mr. Crouse with a right knee sprain superimposed on meniscus tears and post-traumatic degenerative arthritis secondary to the July 6, 2010, injury. Dr. Kropac further opined that Mr. Crouse will require ongoing maintenance care in relation to the July 6, 2010, injury, with the possibility of a total right knee arthroplasty. On December 29, 2014, Dr. Kropac completed a reopening application in which he opined that the 2014 injury amounts to an aggravation of the July 6, 2010, injury.

On May 13, 2015, Mr. Crouse testified via deposition. He indicated that following the July 6, 2010, injury but prior to the September 24, 2014, injury, he experienced periodic swelling and inflammation in the right knee. Dr. Kropac also testified via deposition on May 19, 2015. During his testimony, Dr. Kropac reiterated his prior conclusion that the 2014 injury represents an aggravation of the July 6, 2010, injury. Specifically, he opined that arthritis present at the time of the July 6, 2010, injury has significantly progressed. He also opined that the July 6, 2010, injury resulted in articular changes, which have also progressed.

On June 4, 2015, ChuanFang Jin, M.D., performed a records review. She opined that diagnostic imaging along with the operative notes from the meniscus repair performed in 2010 document the presence of degenerative changes which pre-existed the July 6, 2010, injury. Dr. Jin then opined that an MRI performed shortly after the June 6, 2010, injury, along with the operative notes, verifies her conclusion that the degenerative changes pre-existed the compensable injury because degenerative changes are not visible via diagnostic imaging or direct observation until the changes have been present for several years. She further opined that the 2014 injury resulted in a trigger of the pre-existing degenerative changes present in the right knee. Specifically, she noted that diagnostic imaging performed in 2014 revealed an increase in degeneration of the knee joint, which is consistent with the known progression of degenerative changes. Dr. Jin went on to state that Dr. Kropac's attribution of the arthritic changes in the right knee to the July 6, 2010, injury is scientifically incorrect given that the degenerative changes revealed via MRI twenty days after the injury developed over the course of several years.

Finally, Rebecca Thaxton, M.D., performed a records review on February 22, 2016. She opined that the diagnosis of right knee osteoarthritis and/or aggravation of right knee osteoarthritis should not be added as a compensable component of the claim. Dr. Thaxton also noted that diagnostic imaging performed in 2010 and the operative report document the presence of pre-existing osteoarthritis. Additionally, she noted that diagnostic imaging performed in 2014

revealed severe cartilage loss with degeneration. Dr. Thaxton therefore concluded that the osteoarthritic changes were present early in the claim and are not compensable.

The claims administrator denied Mr. Crouse's request to add osteoarthritis of the right knee as a compensable diagnosis on February 22, 2016. The Office of Judges affirmed the claims administrator's decision on August 2, 2016. The Board of Review affirmed the reasoning and conclusions of the Office of Judges in its decision dated April 26, 2017. On appeal, Mr. Crouse, by Gregory Prudich, his attorney, asserts that the evidence of record clearly establishes that osteoarthritis of the right knee should be added as a compensable diagnosis. JKM Enterprises, Inc., by Bradley Crouser, its attorney, asserts that the diagnosis of osteoarthritis pre-existed the compensable injury and, therefore, cannot be added as a compensable diagnosis.

The Office of Judges found that the evidence of record establishes that Mr. Crouse's right knee arthritis pre-dated the July 6, 2010, injury. Specifically, the Office of Judges noted that the July 26, 2010, MRI and the September 24, 2010, operative report contain findings consistent with the presence of significant degenerative disease. Additionally, the Office of Judges relied upon Dr. Jin's conclusion that Dr. Kropac's attribution of the arthritic changes to the July 6, 2010, injury is scientifically incorrect. The Office of Judges then found that Dr. Jin's conclusion that the arthritis pre-existed the July 6, 2010, injury is corroborated by the opinion of Dr. Thaxton.

The Office of Judges then turned to our recent decision in *Gill v. City of Charleston*, 236 W.Va. 737, 783 S.E.2d 857 (2016), in which we held:

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 discreet new injury, that new injury may be found compensable.

Syl. Pt. 3, *Gill*. The Office of Judges found that aggravation of pre-existing osteoarthritis of the right knee cannot be added as a compensable diagnosis in light of our decision in *Gill*. Likewise, the Board of Review evaluated the request to add osteoarthritis as a compensable diagnosis in light of our decision in *Gill*, and affirmed the reasoning and conclusions of the Office of Judges. We also agree with the reasoning and conclusions of the Office of Judges, as affirmed by the Board of Review.

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 Elizabeth D. Walker

DISSENTING:

Justice Menis E. Ketchum