

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

**ERP COMPLIANT FUELS, LLC,
Employer Below, Petitioner**

vs.) No. 17-0497 (BOR Appeal No. 2051713)
(Claim No. 2016024243)

**AMANDA J. MOTT,
Claimant Below, Respondent**

FILED

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

MEMORANDUM DECISION

Petitioner ERP Compliant Fuels, LLC, by H. Toney Stroud, its attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Amanda J. Mott, by Jerome J. McFadden, its attorney, filed a timely response.

The issue on appeal is the compensability of the claim. The claims administrator rejected the claim on April 29, 2016. By its Order dated December 9, 2016, the Office of Judges reversed the claims administrator's decision and held the claim compensable for a right knee sprain. The Board of Review affirmed the Office of Judges' Order on May 1, 2017. 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.

Amanda Mott, a belt mechanic, alleges that she was injured in the course of and as a result of her employment on March 4, 2016, when she slipped on a piece of belt and landed on her right knee, causing it to lock up. Ms. Mott proceeded to the emergency room and was diagnosed with a right knee sprain. Ms. Mott underwent an MRI on April 19, 2016. The MRI was compared to an MRI performed on April 23, 2013, which revealed there was no change to Ms. Mott's pre-existing knee conditions. The claims administrator rejected the claim on April 29, 2016. The Order stated that an injury was not received in the course of and resulting from

employment. The claims administrator also noted that the recent MRI revealed that Ms. Mott's pre-existing conditions were not changed by the alleged injury.

Ms. Mott has a history of pre-existing conditions in her right knee dating back to 2013. At that time, Ms. Mott was treated by Bryan Stafford, PA-C, for bilateral hip strain and right knee strain. As mentioned before, an MRI was performed on April 23, 2013, which revealed a questionable finding for a tear involving the posterior body and posterior horn region of the medial meniscus. Ms. Mott was diagnosed with a meniscal tear due to an injury at work to the right knee and later underwent an arthroscopic medial meniscectomy.

On October 19, 2016, Ms. Mott underwent an independent medical evaluation performed by Prasadarao Mukkamala, M.D., regarding the March 4, 2016, injury. Upon examination, Ms. Mott demonstrated full range of motion in her right knee. Dr. Mukkamala compared Ms. Mott's 2013 and 2016 MRIs and concluded that no new changes in the right knee were demonstrated. Dr. Mukkamala noted no objective evidence that Ms. Mott sustained an injury in March of 2016. He did concede that she developed pain in her right knee.

On December 9, 2016, the Office of Judges reversed the claims administrator's decision rejecting the claim. The Office of Judges noted that while the record was sparse concerning the events surrounding the compensable injury, sufficient evidence existed to suggest that Ms. Mott sustained a work-related injury on March 4, 2016. Ms. Mott sought medical attention and was diagnosed with a right knee sprain. Although evidence was submitted showing Ms. Mott had pre-existing knee problems, the Office of Judges found that it did not preclude her from having a new compensable injury to the right knee. As there was no contradictory evidence concerning Ms. Mott's explanation of the injury, the Office of Judges determined that the diagnosis of right knee sprain should be held compensable in the claim.

The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges on May 1, 2017. In the process of reviewing the claim, the Board of Review considered this Court's ruling in *Gill v. City of Charleston*, 236 W.Va. 737, 783 S.E.2d 857 (2016)¹. The Board of Review notated a list of five factors which it considered in making its determination. The factors are listed as follows:

- 1) Is the injury directly attributable to a definite, isolated and fortuitous occurrence in the course of and resulting from employment?
- 2) Did a medical provider request the diagnosis be included as a compensable condition in the claim?
- 3) Was Claimant being treated for the diagnosis (or was the condition symptomatic) immediately prior to the injury in this claim?
- 4) Does the preponderance of the evidence show the compensable injury aggravated the pre-existing injury?
- 5) Did a discreet new injury result from the aggravation of the pre-existing injury?

¹ While the Board of Review determined that our recent decision in *Gill v. City of Charleston* was applicable to the instant appeal, we find that our reasoning set forth in *Gill* does not apply to the case at bar.

The Board of Review concluded that, after carefully analyzing the appeal and considering these five factors, the Order of the Office of Judges was affirmed.

We agree with the conclusion reached by the Office of Judges as affirmed by the Board of Review. However, we decline to adopt the Board of Review's five factor list as a mandatory test required to fulfill the compensability question when pre-existing conditions are involved. This Court has consistently held that a pre-existing condition will not bar a claimant from receiving workers' compensation benefits for an injury that occurs in the course of and as a result of their employment. *Robinson v. General Glass Co.*, No. 14-0643, 2015 WL 6844975, at *4 (W.Va. Nov. 4, 2015) (memorandum decision). Ms. Mott is not attempting to add her pre-existing condition to the claim. Rather, she is merely alleging a new knee sprain occurred in the course of and as a result of her employment on March 4, 2016. The Office of Judges found that the evidence of record was sufficient to suggest that Ms. Mott suffered a right knee sprain apart from her non-compensable pre-existing conditions. Our review of the record finds a sufficient basis to affirm the decision holding the claim compensable for a right knee sprain.

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