

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Orgill, Inc.,
Employer Below, Petitioner

vs.) **No. 22-0041** (BOR Appeal No. 2056872)
(JCN: 2020023577)

Tamela Angstadt,
Claimant Below, Respondent

MEMORANDUM DECISION

Petitioner Orgill, Inc., appeals the decision of the West Virginia Workers' Compensation Board of Review ("Board of Review").¹ The issue on appeal is the claims administrator's decision holding the claim compensable for right knee sprain and denying the addition of medial meniscus derangement to the claim, which was reversed by the Workers' Compensation Office of Judges ("Office of Judges") insofar as the claims administrator denied the addition of right radial tear of the medial meniscus to the claim. The Office of Judges added right radial tear of the medial meniscus to the claim and affirmed the claims administrator's denial of the addition of medial meniscus derangement to the claim. The Order was affirmed by the Board of Review on December 17, 2021. This Court may not reweigh the evidentiary record, but must give deference to the findings, reasoning, and conclusions of the Board of Review, and when the Board's decision effectively represents a reversal of a prior order of either the Workers' Compensation Commission or the Office of Judges, we may reverse or modify that decision only if it is in clear violation of constitutional or statutory provisions, is clearly the result of erroneous conclusions of law, or is so clearly wrong based upon the evidentiary record that even when all inferences are resolved in favor of the Board's findings, reasoning, and conclusions, there is insufficient support to sustain the decision. *See* W. Va. Code § 23-5-15(c) & (e). We apply a de novo standard of review to questions of law. *See Justice v. W. Va. Off. Ins. Comm'n*, 230 W. Va. 80, 83, 736 S.E.2d 80, 83 (2012). Upon our review, we determine that oral argument is unnecessary and that a memorandum decision affirming the Board of Review's decision is appropriate. *See* W. Va. R. App. P. 21.

Ms. Angstadt, a merchandise receiver, filed a claim for workers' compensation benefits asserting that she injured her right knee when her right leg became stuck between two pallets. Prior to the compensable injury, Ms. Angstadt underwent a right knee MRI which showed a complex tear of the posterior horn of the medial meniscus, tricompartmental degenerative changes with chondrosis, prepatellar bursitis, and a small joint effusion. After the injury, she underwent another

¹Petitioner, Orgill, Inc., is represented by Michael A. Kawash. A response was not filed.

right knee MRI, which revealed an unchanged medial meniscus posterior horn tear and unchanged moderately severe tricompartmental osteoarthritis. There was a new finding of a likely subacute or chronic sprain of the overlying superficial medial collateral ligament. The claims administrator held the claim compensable for right knee sprain but denied the addition of right knee pain and medial meniscus derangement to the claim. Ms. Angstadt protested the decision.

Upon the claims administrator's request, Bill Hennessey, M.D., performed an independent medical evaluation in which he opined that Ms. Angstadt's medial meniscus tear predated the compensable injury, as seen on the preinjury MRI. Dr. Hennessey further opined that Ms. Angstadt sustained no distinct anatomic injury as a result of the compensable injury and that she had no permanent impairment. Robert Shroyer, M.D., conducted a re-review of the postinjury MRI per Ms. Angstadt's request. He stated that he found an oblique radial tear through the posterior horn of the right medial meniscus, which was new when compared to the preinjury MRI. Ms. Angstadt was then seen by Dwight Kemp, D.O., who reviewed the MRI and stated that Ms. Angstadt appeared to have a new tear likely due to her compensable injury. Dr. Shroyer testified in a telephonic deposition that he reviewed both the pre and postinjury MRIs, and while both showed complex tears of the posterior horn of the meniscus, the postinjury MRI also showed a new oblique radial component to the tear. Dr. Kemp also testified in a telephonic deposition in which he opined that Ms. Angstadt suffered a new tear superimposed on her preexisting medial meniscus tear.

The Office of Judges reversed the claims administrator's decision, in part, and added radial tear of the right medial meniscus to the claim. It affirmed the remainder of the claims administrator's decision. The Office of Judges found that, pursuant to *Gill v. City of Charleston*, 236 W. Va. 737, 783 S.E.2d 857 (2016), Ms. Angstadt proved by a preponderance of the evidence that she sustained the discrete new injury of a right medial meniscus radial tear as a result of her compensable injury. The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its order on December 17, 2021.

On appeal, petitioner asserts two assignments of error. First, that the Board of Review committed reversible error in affirming the Office of Judges' clearly wrong decision in light of the evidence of record. Second, petitioner argues that the Board of Review committed reversible error in affirming the Office of Judges' order because the order was arbitrary and capricious. Petitioner asserts that the Office of Judges incorrectly stated that Ms. Angstadt was not able to participate in questioning Dr. Shroyer because she did not have counsel; however, Ms. Angstadt attended the deposition telephonically and declined to ask Dr. Shroyer any questions.² Petitioner argues that the Office of Judges' order gave the false implication of an imbalance of equity between the parties.

²The Office of Judges' order includes a footnote which states, "Ms. Angstadt appeared *pro se* and telephonically and as such was not able to participate in the questioning of Dr. Shroyer." The Office of Judges was incorrect because Ms. Angstadt was asked if she had any questions for Dr. Shroyer and declined to ask any questions. Though the Office of Judges made the incorrect statement that Ms. Angstadt was not able to question Dr. Shroyer, such error has no impact on the Office of Judges' reasoning or conclusions.

After review, we agree with the reasoning and conclusions of the Office of Judges as affirmed by the Board of Review. The standard for the addition of a condition to a claim is the same as for compensability. For an injury to be compensable it must be a personal injury that was received in the course of employment, and it must have resulted from that employment. *See Barnett v. State Workmen's Comp. Comm'r*, 153 W. Va. 796, 172 S.E.2d 698 (1970). A preponderance of the evidence shows that Ms. Angstadt sustained a discrete new injury in the course of and resulting from her employment. The pre and post-injury MRIs clearly show a new radial tear of the right medial meniscus, as noted by both Drs. Kemp and Shroyer, and Dr. Kemp opined that the tear was likely the result of the compensable injury. We find no evidence that the radial tear of the medial meniscus existed prior to the compensable injury. We also find that petitioner's second assignment of error has no merit for the reasons stated above. Because the Board of Review's decision affirming the Office of Judges' order is not in clear violation of constitutional or statutory provisions, is not clearly the result of erroneous conclusions of law, and is not clearly wrong, it is affirmed.

Affirmed.

ISSUED: January 25, 2024

CONCURRED IN BY:

Chief Justice Tim Armstead
Justice Elizabeth D. Walker
Justice John A. Hutchison
Justice William R. Wooton
Justice C. Haley Bunn