

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

**Kathleen M. Chenoweth,**  
**Claimant Below, Petitioner**

vs.) **No. 22-0242** (BOR Appeal No. 2057392)  
(JCN: 2020010760)

**West Virginia Department of Corrections – Pruntytown Center,**  
**Employer Below, Respondent**

**MEMORANDUM DECISION**

Petitioner Kathleen M. Chenoweth appeals the February 28, 2022, order of the West Virginia Workers’ Compensation Board of Review (“Board of Review”). Respondent West Virginia Department of Corrections – Pruntytown Center filed a timely response.<sup>1</sup> On appeal, the petitioner argues that she is entitled to the requested medical treatment, as well as the addition of the requested diagnoses to her claim. The Board of Review reversed the Office of Judges’ order, insofar as ischial bursitis was added as a compensable component of the claim on September 17, 2021, by the Workers’ Compensation Office of Judges (“Office of Judges”). In its order, the Office of Judges affirmed in part and reversed in part a February 17, 2021, claims administrator order which denied a request to add right sacroiliac joint pain, ischial bursitis of right side, lumbar facet joint pain, and lumbar spondylosis to the claim. The Office of Judges affirmed the claims administrator order regarding the denial of right sacroiliac joint pain, lumbar facet joint pain, and lumbar spondylosis as compensable conditions of the claim. The Office of Judges reversed the claims administrator’s denial of the addition of ischial bursitis as a compensable condition of the claim with instructions that such is a compensable condition of the claim. The Board of Review reinstated the February 17, 2021, claims administrator order which denied the request to add several diagnoses to the claim. Upon our review, we determine that oral argument is unnecessary and that a memorandum decision affirming the Board of Review is appropriate. *See* W. Va. R. App. P. 21.

Petitioner Chenoweth sustained a compensable work injury to her right hip on October 16, 2019, when she fell backwards down two concrete steps in the course of and resulting from her employment with the respondent, West Virginia Department of Corrections - Pruntytown, Center.

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<sup>1</sup>Petitioner is represented by J. Thomas Greene Jr. and T. Colin Greene, and respondent is represented by Steven K. Wellman and James W. Heslep.

Petitioner's work boot "got stuck" on exposed rocks of an eroded concrete step, and she fell onto her right buttock and lower back and struck her head. A report of occupational injury form was completed indicating that petitioner was diagnosed with right hip pain as a result of an occupational injury. She also had complaints of a head and right hip injury. The impression reported by Davis Medical Center was acute right hip pain and acute head injury. An attached CT report of Ms. Chenoweth's head revealed no acute intracranial process. An attached x-ray report of the pelvis and right hip revealed lower lumbar spine degenerative changes, mild scoliotic curvature, stable calcification along the lateral aspect of the right proximal femoral diaphysis, and no acute fracture or malalignment. In an order dated November 6, 2019, the claims administrator held Ms. Chenoweth's claim compensable for right thigh sprain.

An MRI performed on November 29, 2019, showed mild L2-3 degenerative disc changes, lower lumbar facet arthropathy, no herniated discs, no nerve root impingement, no spondylosis, and no spondylolisthesis. X-rays taken of Ms. Chenoweth's right hip and pelvis on December 16, 2019, revealed no acute process.

D. Kelly Agnew, M.D., performed an orthopedic independent evaluation on July 1, 2020. Ms. Chenoweth reported discomfort at the right buttock, tailbone, and proximal thigh and stated that her pain is made worse by bending, lifting, turning, and sitting in certain positions. The petitioner told Dr. Agnew that she has pain daily with no relief, which limited her household activities and her ability to walk or drive a car. The physical examination revealed tenderness at the right sciatic notch and right paralumbar region. The impression was lumbosacral strain. Dr. Lynch recommended a lumbar MRI due to persistent right low back symptoms. Dr. Agnew reviewed the previous imaging studies and noted that an MRI performed on December 20, 2019, was an unremarkable study. That MRI of the pelvis revealed no soft tissue damage and no abnormalities in the hip joints or sacroiliac joints to suggest an injury. Ms. Chenoweth's electrodiagnostic studies revealed no evidence of radiculopathy or peripheral neuropathy. Dr. Agnew concluded that there is no evidence of a lingering musculoskeletal injury or disease process ascribed to the activities of October 16, 2019, at which treatment or limitations would be directed. Ms. Chenoweth was found to be at maximum medical improvement with 0% whole person impairment. As a result of the independent medical evaluation report submitted by Dr. Agnew, the claims administrator issued an Initial Notice of Benefits Suspension dated July 20, 2020.

The petitioner was examined by David Lynch, M.D., on November 4, 2020, and presented with complaints of pain in her low back and right buttock. Physical examination revealed tenderness at the right sciatic notch and right paralumbar region. The impression was lumbosacral strain. Dr. Lynch recommended and requested authorization for a repeat lumbar MRI due to the persistence of Ms. Chenoweth's right low back symptoms.

Rebecca Thaxton, M.D., performed a Physician Review and issued a report on November 16, 2020, in which she opined that a repeat MRI was not supported under Ms. Chenoweth's claim. Dr. Thaxton stated, "[a] lumbar MRI now would not be reflective of acute injury on 10/16/19. This is especially so in light of the relatively unremarkable lumbar MRI in the interim in this claim the negative EMG. The claimant may be experiencing progression of degenerative changes." Dr.

Thaxton recommended against authorization of the request for a repeat lumbar MRI.<sup>2</sup> By order dated December 16, 2020, the claims administrator denied the request from Dr. Lynch for a repeat lumbar MRI. Ms. Chenoweth protested the claims administrator's decision.

Meanwhile, Ms. Chenoweth was evaluated by Ali A. Khan, M.D., on December 7, 2020. Dr. Khan diagnosed acute pain and indicated that the petitioner suffered a new injury while at home. The petitioner was evaluated again on January 5, 2021, and Dr. Khan submitted a Diagnosis Update form requesting that right sacroiliac joint pain, ischial bursitis of the right side, lumbar facet joint pain, and lumbar spondylosis be added as compensable conditions under Ms. Chenoweth's claim.

At a deposition conducted on January 7, 2021, Ms. Chenoweth testified that on October 16, 2019, while performing her work duties in the course of and resulting from her employment as a correctional officer, she fell backward on concrete steps and struck her backside, hip, and head. She stated it was raining, and she tried to catch herself, but her work boot had become trapped in a poorly maintained area of the steps resulting in her sustaining a serious injury. The petitioner described the treatment that she received for the injury and her symptoms. She stated that the physical therapy recommended by Dr. Khan exacerbated the pain in her tailbone. Although Ms. Chenoweth complained of pain in her buttocks area to Dr. Agnew, she testified that he failed to examine her buttock area during his examination. The petitioner asserted that she did not have any symptoms prior to her work injury of October 16, 2019, and she had always been able to pass the required physical agility testing for her employment.

In a physician review report dated January 13, 2021, James A. Dauphin, M.D., considered whether the diagnoses of right sacroiliac joint pain, ischial bursitis of the right side, lumbar facet joint pain, and lumbar spondylosis should be added to the claim as compensable conditions. Dr. Dauphin opined that the conditions should not be added to the claim, and he agreed with Dr. Agnew's finding that the petitioner reached maximum medical improvement with no further treatment needed for the allowed diagnoses. Dr. Dauphin stated, "I agree with [Dr. Agnew] and believe that all these other diagnoses are not related to the injury but rather the background degenerative change and also to the secondary injury which did not occur on the job but rather at home." On February 17, 2021, the Encova Select Grievance Board determined that the requested diagnoses should not be added to the claim as compensable conditions based upon the report of Dr. Dauphin.

In a final decision dated September 17, 2021, the Office of Judges found that Ms. Chenoweth had not established by a preponderance of the evidence that a repeat lumbar MRI is medically related and reasonably required for the treatment of the compensable injury. The Office of Judges noted that the petitioner had already undergone a lumbar MRI and an EMG/NCS based upon low back symptoms, which revealed the lumbar condition and no radiculopathy. The Office

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<sup>2</sup>On December 16, 2020, the Encova Select Grievance Board determined that the claim was allowed for strain of muscle, fascia, and tendon of the posterior muscle group at thigh level, right thigh. The Grievance Board found that the denial of a repeat lumbar MRI should be affirmed based upon the reports of Dr. Thaxton and Dr. Agnew.

of Judges reasoned that Dr. Lynch did not identify a differential diagnosis that the repeat MRI could possibly show over the prior studies performed just nine months earlier based upon the same symptoms. As such, the claims administrator's order dated December 16, 2020, denying a repeat lumbar MRI, was affirmed.

In regard to Dr. Khan's request to add additional medical conditions to the claim, the Office of Judges found that the petitioner's claim was held compensable for a sprain of the right thigh, and her symptoms developed subsequent to her injury. The Office of Judges further found that the conditions of right sacroiliac joint pain and lumbar facet joint pain cannot be held compensable because "pain is a symptom, not a diagnosis." The Office of Judges also denied the addition of lumbar spondylosis to the claim because the November 29, 2019, MRI of the lumbar spine specifically noted that no spondylosis was revealed. It was noted that the x-ray report dated October 17, 2019, a day after the compensable incident, showed degenerative changes in the petitioner's lumbar spine. The Office of Judges found that the evidence did not support that lumbar spondylosis developed due to the compensable injury, and the claims administrator did not err in denying the addition of such as a compensable condition of the claim.

The Office of Judges further found that the petitioner established by a preponderance of the evidence that ischial bursitis was causally related to the compensable injury or the events which caused the compensable injury. It was noted that Ms. Chenoweth first reported symptoms of ischial bursitis on July 1, 2020, and she later testified on January 7, 2021, that when she fell, she fell backwards upon concrete steps, landing on her backside. Ms. Chenoweth complained about the pain that she suffered, as was noted by Dr. Lynch in his November 4, 2020, treatment note when he stated that when the petitioner fell, she landed on her right buttock. Ms. Chenoweth did not just fall on the ground because Ms. Bullough, PA-C, indicated that the petitioner landed on her pepper spray and handcuffs attached to her uniform when she fell. Because the Office of Judges concluded that the mechanism of injury indicated trauma to the ischial bursa area, coupled with Dr. Khan's opinion that the petitioner's ischial bursitis on the right side was causally related to the compensable injury, ischial bursitis was found to be a compensable condition in the claim. The claims administrator's order dated February 17, 2021, denying the request for diagnosis update to add right sacroiliac joint pain, ischial bursitis of the right side, lumbar facet joint pain, and lumbar spondylosis to the claim was affirmed in part and reversed in part. The claims administrator's order was reversed regarding the denial of ischial bursitis being added as a compensable condition in the claim.

In an order dated February 28, 2022, the Board of Review found that the analysis and conclusions of the Office of Judges regarding the diagnosis of ischial bursitis were clearly wrong in view of the reliable, probative, and substantial evidence in the whole record. The Board of Review noted that the diagnosis update from Dr. Khan, which included ischial bursitis of the right side, was completed over a year after the compensable injury occurred. It was found that "[t]here is no description of the clinical findings on which the diagnosis is based and no explanation as to how this condition is related to the compensable injury. No other medical provider diagnosed ischial bursitis of right side." The Board of Review concluded that the preponderance of the evidence failed to demonstrate that ischial bursitis of the right side was causally related to the compensable injury. The final decision of the Office of Judges dated September 17, 2021, was

reversed insofar as it added ischial bursitis as a compensable component to the claim. The claims administrator's order dated February 17, 2021, which denied the request to add several diagnoses, including ischial bursitis of the right side, was reinstated, and the remaining provisions of the final decision of the Office of Judges was affirmed.

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 ruling 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. of Ins. Comm'n*, 230 W. Va. 80, 83, 736 S.E.2d 80, 83 (2012).

Although the petitioner argues that the Board of Review incorrectly reversed the approval of Dr. Khan's diagnosis update and failed to take the time to analyze the petitioner's mechanism of injury, no information was provided on the Diagnosis Update form regarding the clinical findings about the current diagnosis and how it relates to the compensable injury. Nonetheless, prior to the diagnosis update, Dr. Agnew performed an orthopedic independent medical evaluation on July 1, 2020, and concluded that the diagnosis of strain was appropriate and that Ms. Chenoweth had reached maximum medical improvement. Dr. Dauphin reviewed the diagnosis update, and other records, and opined that the diagnoses, including ischial bursitis of the right side, were not related to the compensable injury. Instead, Dr. Dauphin opined that the additional diagnoses were related to the underlying degenerative changes and the second injury that occurred at the petitioner's home. The preponderance of the evidence supports the reasoning and conclusions of the Board of Review, and its conclusion is not clearly wrong. Therefore, the Board's order 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