

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

**LILLIE M. EVANS,**  
**Claimant Below, Petitioner**

vs.) **No. 18-0572** (BOR Appeal No. 2052353)  
(Claim No. 2017018365)

**WENDBECK CORPORATION,**  
**Employer Below, Respondent**

**FILED**  
**November 2, 2018**

EDYTHE NASH GAISER, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

**MEMORANDUM DECISION**

Petitioner Lillie M. Evans, by Reginald D. Henry, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. The Wendbeck Corporation, by Jeffrey B. Brannon, its attorney, filed a timely response.

The issue on appeal is the compensability of the alleged work-related injury. The claims administrator rejected Ms. Evans's claim on February 6, 2017. The Workers' Compensation Office of Judges affirmed the rejection of the claim in a Final Order dated December 1, 2017. This appeal arises from the Board of Review's Order dated May 25, 2018, 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.

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.

Ms. Evans, a cook, was examined by Anthony McFarlane, M.D., for multiple problems on July 22, 2015. One of the problems was for the sudden onset of a frozen shoulder. Dr. McFarlane made an orthopedic referral and prescribed physical therapy. On August 13, 2015, Ms. Evans was seen by Matthew Nelson, M.D., for an evaluation of her right shoulder. Dr. Nelson diagnosed pain in the shoulder joint, primary localized osteoarthritis of the shoulder region, and other specified disorders of rotator cuff syndrome of the shoulder and allied

disorders. Dr. Nelson noted that an x-ray showed a mild acromioclavicular joint and glenohumeral degenerative joint disease. He administered an injection to Ms. Evans's right shoulder.

On April 3, 2016, Ms. Evans was evaluated at Access Health Rural Acres by Michael Antolini, D.O. Ms. Evans complained of multiple problems including her right shoulder. Dr. Antolini ordered an x-ray of her right shoulder. A right shoulder x-ray taken on April 27, 2016, showed degenerative changes, but no acute fracture or dislocation. An inferior lateral tilt of the distal acromion is noted with decreased acromiohumeral distance, which was suspected to be associated with chronic rotator cuff impingement or tear. After reviewing the x-ray report, Dr. Antolini noted that the results were indicative of suspected chronic rotator cuff impingement or tear. It was determined that an MRI was needed.

On July 27, 2016, Ms. Evans was seen in the emergency room at Plateau Medical Center complaining of an injury sustained at work while lifting or carrying five pounds of chili. A right shoulder x-ray showed osteophytes at the level of the acromioclavicular joint with no acute fracture or dislocation. It was noted that she had a previous episode when she woke up and could not raise her arm. She was given prescriptions and told to follow up with Dr. Antolini.

Ms. Evans filed an Employee's and Physician's Report of Occupational Injury or Disease dated July 27, 2016, indicating she injured her arm while at work. She stated that she was putting water in the chili well and heard her arm pop. She sought treatment at Plateau Medical Center where she was diagnosed with shoulder strain. Tracy Lester, D.O., indicated that she could return to work on July 31, 2016, but could do no lifting of her right arm. It was also indicated that a previous shoulder injury had been aggravated from the July 27, 2016, incident.

Ms. Evans again treated with Dr. Nelson on August 18, 2016, whereupon it was noted that she had been experiencing right shoulder pain since February, without a known injury. Dr. Nelson noted crepitus during his examination. Range of motion testing showed active forward flexion abduction to 90 degrees. Dr. Nelson assessed primary osteoarthritis, right shoulder and complete rotator cuff tear or rupture of the shoulder, not specified as traumatic. Dr. Nelson stated that Ms. Evans has clinical evidence of a complete right rotator cuff tear and ordered an MRI.

Dr. Nelson reviewed the MRI on September 15, 2016, and noted that it revealed a right shoulder rotator cuff tear. He diagnosed Ms. Evans with a complete rotator cuff tear or rupture of the right shoulder, not specified as traumatic. Dr. Nelson opined that Ms. Evans would benefit from right shoulder arthroscopy for rotator cuff repair. Following the assessment of Dr. Nelson, Ms. Evans returned to Dr. Antolini on September 26, 2016. Dr. Antolini added rotator cuff tear as a diagnosis and assessed the tear as a new injury.

Ms. Evans underwent rotator cuff tear surgery, which was performed by Dr. Nelson, on November 9, 2016. The operative report showed that the surgery revealed a large rotator cuff tear as well as a grade III chondromalacia of the humeral head. The operative report further indicated that her rotator cuff was not repairable, as the tissue was too retracted.

Ms. Evans was examined by Dr. Antolini on January 24, 2017. Her chief complaint was listed as right shoulder pain. Ms. Evans reported sharp tingling right shoulder pain. Dr. Antolini noted that the injury occurred prior to the injury at work and had been worked up appropriately. He believed it may have further impaired her job function. He stated that he discussed her work-up and imaging prior to the date she stated she was injured at work and counseled her that her injury at work did not initially cause her shoulder pain. Dr. Antolini diagnosed Ms. Evans with shoulder joint pain, chronic, unchanged.

On January 25, 2017, Section II of a second WC-1 form was completed by Dr. Lester at Plateau Medical Center. Dr. Lester reported a right shoulder injury and reported that Ms. Evans was experiencing shoulder pain. He opined that her condition was the direct result of an occupational injury and that the injury aggravated a prior injury. On February 6, 2017, the claims administrator rejected the claim due to a pre-existing rotator cuff condition.

Ms. Evans testified at a deposition dated May 8, 2017, that she injured her shoulder while at work on July 27, 2016. She stated that she was placing a chili pot into a heat well and she heard a pop in her right shoulder and thereafter experienced significant pain. Ms. Evans reported that she had not had any other problems with her shoulder other than the January 2016 incident and the July 2016 incident.

The Office of Judges affirmed the claims administrator's Order of February 6, 2017, in a Final Decision dated December 1, 2017. The Office of Judges found that Ms. Evans had not established by a preponderance of the evidence that she sustained a personal injury resulting from her employment on July 27, 2016. It was found that the medical record showed that the only diagnosis attributed to Ms. Evans's injury of July 27, 2016, was for shoulder pain. It was further found that the medical record established that the primary cause of the shoulder pain is a large rotator cuff tear in Ms. Evans's right shoulder. The Office of Judges found that the rotator cuff condition pre-existed the injury of July 27, 2016. Dr. Nelson diagnosed disorders of rotator cuff syndrome and allied disorders as early as August 13, 2015. An x-ray performed on April 27, 2016, made findings associated with chronic rotator cuff impingement or tear. Although Ms. Evans experienced an occupational incident on July 27, 2016, the Office of Judges reasoned that the incident caused her to experience pain but did not preponderantly establish that the source of her pain resulted from an occupational injury. The Office of Judges concluded that the diagnosis of pain does not establish a discrete new injury and does not establish that an injury occurred in the course of and resulting from her employment. The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its decision on May 25, 2018.

After review, we agree with the decision of the Board of Review. Neither Ms. Evans's treating physician nor her treating orthopedist attributes any of her right shoulder symptoms to her alleged work injury. The only evidence of record that reflects that an acute injury occurred is the WC-1 form that was completed by an attending physician at Plateau Regional Medical Center, who had no knowledge of Ms. Evans's history of prior right shoulder issues. Ms. Evans has failed to establish that the Board of Review erred when it affirmed the December 1, 2017, Final 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 2, 2018

**CONCURRED IN BY:**

Chief Justice Margaret L. Workman

Justice Elizabeth D. Walker

Justice Paul T. Farrell sitting by temporary assignment

Justice Tim Armstead

Justice Evan H. Jenkins

Justice Allen H. Loughry II suspended and therefore not participating.