

## SUPREME COURT OF APPEALS OF WEST VIRGINIA

### Total Distribution, Inc. v. Express Services, Inc. and Charles Plantz

No. 19-0089 (BOR Appeal No. 2053090) (W. Va. Dec. 6, 2019) · No. No. 19-0089 (BOR Appeal No. 2053090)  
(Claim Nos. 2017024849 & 2016012919) · Decided December 6, 2019

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#### SUMMARY

The West Virginia Supreme Court of Appeals affirmed the Board of Review's decision in a workers' compensation matter involving Charles Plantz's left shoulder injuries. The court upheld authorization for rotator cuff repair surgery under the April 17, 2017, claim and agreed that temporary total disability benefits were requested prematurely because Plantz had not missed work. The court issued the decision as a memorandum decision under Rule 21 of the West Virginia Rules of Appellate Procedure.

#### CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                  |
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| COURT                 | Supreme Court of Appeals of West Virginia                                                                                                                                                                                                                                                                                                                                        |
| WRITING FOR THE COURT | Chief Justice Elizabeth D. Walker; Justice Margaret L. Workman; Justice Tim Armstead; Justice Evan H. Jenkins; Justice John A. Hutchison                                                                                                                                                                                                                                         |
| JURISDICTION          | West Virginia                                                                                                                                                                                                                                                                                                                                                                    |
| DECIDED               | December 6, 2019                                                                                                                                                                                                                                                                                                                                                                 |
| DOCKET                | No. 19-0089 (BOR Appeal No. 2053090) (Claim Nos. 2017024849 & 2016012919)                                                                                                                                                                                                                                                                                                        |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                         |
| PROCEDURAL POSTURE    | Total Distribution appealed the West Virginia Workers' Compensation Board of Review's affirmance of an Office of Judges order that authorized left shoulder rotator cuff repair surgery under the April 17, 2017, claim but denied temporary total disability benefits as prematurely requested.                                                                                 |
| STANDARD OF REVIEW    | The Board of Review's decision will be affirmed unless it clearly violates a constitutional or statutory provision, clearly results from erroneous conclusions of law, or is so clearly wrong on the evidentiary record that, even resolving all inferences in favor of the Board's findings, reasoning, and conclusions, there is insufficient support to sustain the decision. |
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|---------------------------|--------------------------------------------------------------------------------------------------------|
| <b>PRECEDENTIAL VALUE</b> | Memorandum decision; the opinion does not identify a reporter publication or precedential designation. |
| <b>PARTIES</b>            | Total Distribution, Inc. v. Express Services, Inc., Charles Plantz                                     |

## TOPICS

workers compensation   appellate procedure   standard of review   administrative law   employment law

## PRACTICE AREAS

workers compensation   administrative law   appellate procedure   employment law

## QUESTIONS PRESENTED

1. Whether a left shoulder rotator cuff tear should be added to Plantz’s April 17, 2017, workers’ compensation claim and whether rotator cuff repair surgery should be authorized.
2. Whether Plantz was entitled to temporary total disability benefits when he had returned to work and had not missed any work because of the compensable injury.
3. Whether the Board of Review’s decision was clearly wrong, legally erroneous, or in violation of a constitutional or statutory provision under the applicable standard of review.

## HOLDINGS

1. The rotator cuff tear was properly added to the April 17, 2017, compensable claim because the evidence showed no preexisting rotator cuff tear before that work-related event and showed a new tear afterward.
2. Authorization of left shoulder rotator cuff repair surgery was proper because the rotator cuff tear was properly included in the April 17, 2017, claim and the surgery was medically related and reasonably required.
3. Temporary total disability benefits were properly denied as premature because Plantz had not missed any work and therefore had not established that he was unable to work as a result of the compensable injury.

## KEY QUOTATIONS

*“Therefore, while the first shoulder injury may have made Mr. Plantz more susceptible to a rotator cuff tear, the second injury resulted in the discrete new injury of a rotator cuff tear.”* (5)

*“Because he has not missed any days of work due to the injury, the Office of Judges was correct to find that temporary total disability benefits were requested prematurely.”* (7)

## FACTUAL BACKGROUND

Plantz sustained an initial compensable left shoulder injury while working for Express Services and underwent surgery in August 2016; the medical evidence at that time showed no rotator cuff tear, and he returned to unrestricted work. On April 17, 2017, while working for Total Distribution, he felt a pop and immediate pain while closing a shipping container door. A subsequent MRI showed a partial rotator cuff tear, and the Office of

Judges concluded that this was a discrete injury resulting from the second work-related event, although the first injury may have increased his susceptibility. Plantz continued working while awaiting surgery authorization and therefore had not missed work for which temporary total disability benefits were payable.

## PROCEDURAL HISTORY

The claims administrator denied authorization for left shoulder arthroscopic rotator cuff repair and separately denied reopening the claim for temporary total disability benefits. The Office of Judges authorized the surgery and found that the request for temporary total disability benefits was premature because Plantz had not missed work; the Board of Review affirmed. The Supreme Court of Appeals reviewed the Board's decision and affirmed.

## DISPOSITION

affirmed

## CASES CITED

- Barnett v. State Workmen's Compensation Commissioner, 153 W. Va. 796, 172 S.E.2d 698 (1970)

## INSTRUCTIONS FOR AN AI ASSISTANT

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