

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

M. H.,
Claimant Below, Petitioner

vs.) **No. 22-0132** (BOR Appeal No. 2057450)
(JCN: 2020012178)

Brooks Run South Mining, LLC, C/O ANR,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner M.H. appeals the decision of the West Virginia Workers' Compensation Board of Review ("Board of Review"). Respondent Brooks Run South Mining, LLC, C/O ANR filed a timely response.¹ The issue on appeal is the claims administrator's closure of the claim for temporary total disability benefits, which was affirmed by the Workers' Compensation Office of Judges ("Office of Judges") and ultimately affirmed by the Board of Review on January 24, 2022. 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 affirms prior rulings by both the Workers' Compensation Commission and 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 based upon a material misstatement or mischaracterization of the evidentiary record. *See* W. Va. Code §§ 23-5-15(c) & (d). 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.

M.H., an electrician, was injured in the course of his employment in 2019, when he tripped and fell. His treating physicians ordered two computerized tomography scans in the days following the injury and, shortly thereafter, the claim was ruled compensable for lower back and pelvic contusions. A few months later, the claims administrator denied M.H.'s request for the addition of a lumbar herniated disc diagnosis to the claim, and the claims administrator's decision, though

¹Petitioner, M.H., is represented by Reginald D. Henry, and respondent, Brooks Run South Mining, LLC, C/O ANR, is represented by Sean Harter.

We use initials where necessary to protect the identities of those involved in this case. *See* W. Va. R. App. P. 40(e).

reversed by the Office of Judges after petitioner's protest, was upheld by the Board of Review on appeal to that tribunal, for reasons explained below.

Various physicians evaluated M.H. in the year following his compensable injury, as the parties litigated several protests to claims administrator decisions. Notable for the issue before us, P. Ignatiadis, M.D., a neurosurgeon, evaluated petitioner on September 16, 2020, and opined that conservative treatment options were not exhausted. However, a little more than a week later, David Soulsby, M.D., provided an addendum (dated September 25, 2020) to an earlier report completed by him and stated that, after consideration of pre-injury MRIs and treatment notes previously unavailable to him, he believed that M.H.'s disc abnormalities preexisted the compensable injury.² Dr. Soulsby explained that, because pre- and post-injury MRIs showed no change in the claimant's lumbar spine condition, there was a reasonable medical probability that the lumbar disc abnormalities were not the result of the compensable injury, and M.H., therefore, had reached the maximum degree of medical improvement. Dr. Soulsby stated that the claimant could return to full duty work.³ On the basis of Dr. Soulsby's addendum, the claims administrator closed the claim for temporary total disability benefits, and petitioner filed a timely protest.

The Office of Judges affirmed the claims administrator's closure of the claim for temporary total disability benefits after finding that Dr. Soulsby's addendum, in which he concluded that petitioner's disc abnormalities preexisted the compensable injury, was the most credible evidence of record. The Office of Judges concluded that petitioner was found to be at maximum medical improvement, and the symptoms he detailed were not related to his compensable lower back and pelvic contusions. The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its order on January 24, 2022.

On appeal, petitioner asserts two assignments of error relevant to the issue. He argues, first, that the Board of Review was clearly wrong in affirming the Office of Judges' order and, second, that the Board of Review was clearly wrong in finding that petitioner failed to prove by a preponderance of the evidence that his temporary total disability continued on October 13, 2020, and beyond. Petitioner argues that he continues to suffer symptoms related to his compensable injury and that his treating medical provider, PA-C Charles E. Hill, Jr., certified in late October 2020, that petitioner was "not fit for work." We have reviewed PA-C Hill's office notes included in the appendix record on appeal and agree with the Office of Judges and the Board of Review that PA-C Hill's conclusion that petitioner remains temporarily and totally disabled is founded entirely on his opinion that petitioner suffers a herniated lumbar disc as a result of his compensable injury.

² According to the Office of Judges' order, Dr. Soulsby's report of his initial independent medical examination was not submitted to the Office of Judges. A report of an independent medical examination completed in July 2020 was included in the appendix record on appeal with this Court. We, however, find that consideration of Dr. Soulsby's July 2020 independent medical examination report is not necessary to our resolution of this appeal.

³ At this time, Dr. Soulsby opined that petitioner suffered a 7% permanent partial disability, but that the entirety of the disability was the result of preexisting impairment. Petitioner's permanent partial disability is not at issue in this appeal.

As we explained above, the claims administrator ruled that petitioner’s disc abnormality was not caused by his compensable injury, and the Board of Review ultimately upheld that determination, as did this Court. *See M.H. v. Brooks Run South Mining*, No. 21-0659, 2023 WL 3968709 (June 13, 2023) (memorandum decision). As the administrative law judge aptly explained, the question of whether petitioner reached his maximum degree of medical improvement (and, thus, no longer requires temporary total disability benefits) is dependent on the inclusion or exclusion of the diagnosis of lumbar herniated disc as a compensable component of the claim. Because the Office of Judges was bound by the earlier determination that it was not, the only possible conclusion was that petitioner reached maximum medical improvement. Pursuant to West Virginia Code § 23-4-7a, temporary total disability benefits will cease when the claimant has reached maximum medical improvement, has been released to return to work, or has returned to work, whichever occurs first. The evidence indicates the only compensable conditions in the claim are pelvic and lumbar contusions, and Dr. Soulsby determined that the claimant reached maximum medical improvement for those conditions. Petitioner’s claim was therefore properly closed for temporary total disability benefits.

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