

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

**Clinton L. Lester Jr.,**  
**Claimant Below, Petitioner**

vs.) **No. 22-0359** (BOR Appeal No. 2057560)  
(JCN: 2021008720)

**Justice Family Group, LLC,**  
**Employer Below, Respondent**

**MEMORANDUM DECISION**

Petitioner Clinton L. Lester Jr. appeals the decision of the West Virginia Workers' Compensation Board of Review ("Board of Review"). Respondent Justice Family Group, LLC, filed a timely response.<sup>1</sup> The issue on appeal is the claims administrator's rejection of the claim for carpal tunnel syndrome, which was affirmed by the Workers' Compensation Office of Judges ("Office of Judges") and then by the Board of Review on April 21, 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. *See* W. Va. R. App. P. 21.

Mr. Lester, a section foreman, filed a claim alleging that he developed bilateral carpal tunnel syndrome as a result of his work duties with respondent, Justice Family Group, his employer from October 2019 through December 2019. His duties included operating jack hammers, drills, and vibrating tools; using torque wrenches and hammers; roof bolting; driving shuttle cars; setting timbers and supports; and hanging and replacing ventilation systems. Prior to his employment for Justice Family Group, Mr. Lester worked in coal mines for over twenty years for various employers performing essentially the same job duties. Michael Kominsky, D.C., performed an EMG which revealed moderate to severe bilateral carpal tunnel syndrome that was worse in the right wrist. Dr. Kominsky opined that Mr. Lester's carpal tunnel syndrome was causally related to his job duties.

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<sup>1</sup>Petitioner, Clinton L. Lester Jr., is represented by Reginald D. Henry, and respondent, Justice Family Group, LLC, is represented by Billy R. Shelton.

In a report, Joseph Grady, M.D., noted that Mr. Lester was a foreman for about twenty years and stopped working in 2019. Mr. Lester reported to Dr. Grady that he sought treatment in 2005, prior to working for respondent, and was diagnosed with carpal tunnel syndrome. After examination, Dr. Grady opined that Mr. Lester's carpal tunnel syndrome was the result of his job duties as a coal mine foreman; however, he further opined that Mr. Lester's carpal tunnel syndrome would not have developed from exposure during his employment for Justice Family Group, because he only worked for the company for three months, and carpal tunnel syndrome develops over time. Based on Dr. Grady's report, the claims administrator rejected the claim on May 11, 2021. Mr. Lester protested the claims administrator's decision. He testified in a deposition that he last worked in December 2019, and that he was first diagnosed with carpal tunnel syndrome in 2004 or 2005 while working for Chief Mining. He did not file a workers' compensation claim at that time, but Mr. Lester testified that his symptoms have progressively worsened since his initial diagnosis.

The Office of Judges affirmed the claims administrator's rejection of the claim. It found that Mr. Lester was diagnosed with carpal tunnel syndrome prior to his employment with Justice Family Group, and, therefore, his carpal tunnel syndrome is not compensable. The Board of Review adopted the finding of fact and conclusions of law of the Office of Judges and affirmed its decision on April 21, 2022.

On appeal, petitioner argues that the Board of Review was clearly wrong to affirm the Office of Judges' order and that the Board of Review was clearly wrong in finding that Mr. Lester did not prove by a preponderance of the evidence that he developed carpal tunnel syndrome in the course of and resulting from his employment. Mr. Lester asserts that though he reported to Dr. Grady that he was diagnosed with carpal tunnel syndrome in 2005, there is no medical evidence of record supporting the diagnosis in 2005, and Dr. Grady noted several times in his report that there was no evidence of preexisting or degenerative disease in Mr. Lester's bilateral wrists.

After review, we agree with the reasoning and conclusions of the Office of Judges, as affirmed by the Board of Review. As the Office of Judges noted that in *Spartan Mining Company v. John Anderson*, No. 17-1003, 2018 WL 2306287 (W.Va. May 21, 2018) (memorandum decision), this Court found that when a diagnosis of carpal tunnel syndrome predates employment with the employer at issue, the carpal tunnel syndrome cannot be causally related to those work activities. In Syllabus Point 5 of *Moore v. ICG Tygart Valley, Inc.*, 247 W. Va. 292, 879 S.E.2d 779 (2022), this Court held that:

A claimant's disability will be presumed to have resulted from the compensable injury if: (1) before the injury, the claimant's preexisting disease or condition was asymptomatic, and (2) following the injury, the symptoms of the disabling disease or condition appeared and continuously manifested themselves afterwards. There still must be sufficient medical evidence to show a causal relationship between the compensable injury and the disability, or the nature of the accident, combined with the other facts of the case, raises a natural inference of causation. This presumption is not conclusive; it may be rebutted by the employer.

The record clearly shows that Mr. Lester was previously treated for bilateral hand symptoms in 2005 by Dr. Shamblin and was diagnosed with carpal tunnel syndrome. Mr. Lester testified that he was diagnosed with carpal tunnel syndrome while working for Chief Mining in 2005, but a workers' compensation claim was not filed. By Mr. Lester's own testimony, his symptoms began in 2005 and progressively worsened until he ceased working in December of 2019. His wrists and hands were clearly symptomatic prior to his employment with Justice Family Group. The Board of Review was correct to affirm the rejection of the claim.

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