No. _____

BEFORE THE STATE OF WEST VIRGINIA
INTERMEDIATE COURT OF APPEALS

QUANTA SERVICES, INC.,
Petitioner,

v. **JCN: 2021018967**

ZACHARY BOLLING

Respondent.

PETITION FOR APPEAL FROM A DECISION OF THE WORKERS' COMPENSATION BOARD OF REVIEW

Respectfully submitted,
QUANTA SERVICES, INC.,

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November 8, 2022

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I. STATEMENT OF THE CASE

This claim comes before the Court pursuant to the employer's appeal from the October 3, 2022, Order of the Worker's Compensation Board of Review. **(Ex. 1)**. That Order reversed the May 19, 2021, order of the Claims Administrator rejecting the claim, held the claim compensable for electrical shock and sequelae of electrical shock, and remanded the claim to the Claims Administrator to address temporary total disability and other benefits. **(Ex. 2)**. The Board's Order is clearly wrong in view of the reliable, probative, and substantial evidence on the whole record, is arbitrary, capricious, and is characterized by abuse of discretion and other error of law. Accordingly, the employer requests that the Board of Review's October 3, 2022, Order be REVERSED, and the May 19, 2021, order of the Claims Administrator rejecting the claim REINSTATED.

II. SUMMARY OF ARGUMENT

It is the employer's position that the Board of Review's October 2, 2022, Order is premised entirely on the speculative and plainly unreliable opinion of Dr. Musser, is arbitrary and capricious in its weighing of the evidence – and blatant disregard for the evidence – which establishes that the claimant did not sustain a workplace injury on March 10, 2021. As such, the Order is in plain noncompliance with the requirements of West Virginia Code § 23-4-1g, which requires that decisions be made under a preponderance of the evidence standard, and which discards the "rule of liberality" in the adjudication of workers' compensation disputes.

III. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

This claim involves complicated medical and scientific fact, and the employer would request the opportunity to present oral argument on this matter.

IV. STATEMENT OF FACTS

The claimant, Zachary Bolling, was employed as a groundman for Quanta Services, Inc. on March 10, 2021, when he collapsed at work. The claimant was part of a work crew who were

lowering a de-energized electrical transmission line from a tower, so the tower, which was located on a hillside, could be repaired. The events of that day are set forth in the statements and testimony of several witnesses and are generally consistent. The record contains transcripts from the depositions of the claimant and co-workers Shawn Fisher and Freddie Ray Boggs, and the statement of Jason Bryant, as well as an Investigation Report prepared by American Electric Power.

The record establishes that a co-worker, Shawn Fisher, was in the bucket of a bucket truck lifted up to the level of the top of the tower. **(EX 12, p. 0217- 0223)**. Mr. Fisher tested the line for voltage and obtained a reading of zero volts. He attached a ground wire connecting the power line to the tower, and then began lowering the powerline to the crew of men waiting below. The ground wire to the tower was not long enough for the powerline to be lowered all the way to the ground. A new ground wire was attached from the power line to a grounding rod driven onto the ground. The claimant and three other men took hold of the power line and were maneuvering the line into position to lower it the rest of the way to the ground and attaching a grip to the line to anchor the power line to a bulldozer. Freddie Ray Boogs testified at his deposition that at the time the claimant collapsed, the claimant and three other co-workers were holding onto the power line; the claimant, Trevor Almack and Michael Lawson were wearing ordinary leather work gloves, and Phillip Hanshaw was holding the line barehanded**. (EX 13, pp. 0284-0285)**. About thirty seconds after the men on the ground took hold of the line, the claimant suffered what appeared to be a seizure event. **(EX 8, p. 0180)**. The claimant's co-workers reported seeing him collapse and he was unconscious with vomiting and foaming at the mouth. The claimant's co-workers retrieved an AED, and the claimant was defibrillated and then CPR was performed while the men took the claimant to the bottom of the hill they were working on to meet an ambulance, which took him to meet a helicopter that transported the claimant to Roanoke Memorial Hospital in Roanoke, Virginia.

Mr. Boggs testified that he returned to the site several hours after the claimant collapsed and received a shock from the power line. The AEP Investigation report states that the ground lead was moved from the driven ground to the base of the structure, which was determined to be a lower impedance path, and that the crew measured zero volts on the conductor at that time and prior to the start of work the following day. **(EX 8, p. 0180)**. Jason Bryant's Statement somewhat conflicts with AEP's report in that he states that his understanding was that rather than relocating the ground lead from the driven ground to the base of the tower another ground lead was added to the driven ground and connected to the base of the tower. **(EX 17, p. 0373)**. Regardless, Mr. Bryant's statement cites that the voltage reading was zero volts after the ground lead was connected back to the tower at that time and prior to the start of work the following day. Mr. Bryant's statement goes on to say that the additional ground lead between the tower and the driven ground rod was removed the following morning in an attempt to replicate the original conditions and all voltage tests read zero volts with just the ground lead connected to the screw-in ground rod.

Of record is a Prehospital Report from March 10, 2021, prepared by Carilion Clinic Life-Guard, an air ambulance EMS unit. **(Ex 3)**. At 12:24 p.m. a call for assistance was placed to Carilion for assistance. In the Prehospital Report, the Emergency Medical Services (EMS) staff wrote that they were advised by the ground ambulance EMS staff that the claimant reported to work without complaints that morning, "then was witnessed to have seizure like activity and then unresponsiveness." **(Ex 3, p. 0013)**. Bystanders attempted to wake the claimant without success, and he was defibrillated with an AED. The air ambulance EMS crew found the claimant unresponsive and his airway with secretions. His airway was suctioned, and the claimant was assessed. The EMS staff found no signs or symptoms of trauma about his head, neck, chest and extremities. The history was obtained that the claimant had an upcoming neurology appointment. The claimant's chest examination was normal. He

was placed on a cardiac monitor and a normal sinus (heart) rhythm was obtained. The claimant was intubated to protect his airway due to vomiting. Under the past medical history section of the report, it was reported by bystanders that the claimant may have a history of seizures and was scheduled for a neurology appointment that week. He was transported to Carilion Clinic Roanoke Memorial Hospital ("CCRMH") Emergency Department.

Of record are the medical records from Roanoke Memorial Hospital from March 10, 2021, to March 16, 2021. **(Ex. 4)**. Upon arrival in the Emergency Department, the claimant was unresponsive and intubated; Emergency Department physician Karen Kushi, M.D. noted that the claimant had "no evidence of entrance/exit wounds" as would be expected if he had received an electrical injury. **(Ex. 4, p. 0028).** Dr. Kushi noted the claimant was a 25-year-old male who presented to the Emergency Department as status post seizure like activity.

Andrew Brown, M.S., spoke with Jessica Bolling and co-worker Mike Lawson on the evening of March 10, 2021. **(EX 4, p. 0151)**. He noted:

> Per wife, patient was in a MVA it 2015 where he hit his head and had an episodes of headaches and fainting spells. Patient has a sort of aura before these spells where he feels "cold water running from on his head and down his body", he then stares off and is non-responsive. He also has witnessed syncopal episodes at times. This morning patient went to work (works as a lineman) and had a syncopal episode. Coworker (Mike Lawson) who I spoke with on the phone said that 3 of them were holding the same line and there were multiple monitors and electrodes showing the line was inactive and grounded. Mr. Lawson described the patient falling down "almost in slow motion, like he gracefully fell to the ground almost as if he was sitting/lying down" Mr. Lawson also states he was limp during the entire episode, was foaming at the mouth, and began shaking. Lawson denied seeing rhythmic contractions and said "it looked like if someone just came up behind you and started shaking you." Mr. Lawson noted the pt was breathing at this time and appeared unconscious, he was also snoring and may have signs and sx of OSA per wife. The pt's breathing progressively slowed. He was then shocked with AED, patient was in NSR when EMS arrived but had a GCS of 3 so he was intubated

The claimant was seen by Dr. Chad Demott on the morning of March 11, 2021. **(EX 4m, p. 0070)**. Dr. Demott noted that the claimant's condition was the result of a "probable seizure event" and that it was "difficult to tell if cardiac event caused syncope/seizure or the opposite." Dr. Demott's noted the claimant's history of a 2015 accident with subsequent "spells" with "the sensation of cold water running from his head down his body and then feeling as if will pass out." Dr. Demott also noted that the claimant's wife reported occasional marijuana use. **(EX 4, p. 0071).** Dr. Demott additionally noted:

> He was recently started on Lexapro and had a reduction in his dose of Vyvanse. The only major drug interaction would be serotonin toxicity which would not fit patient's presentation. His UDS was unrevealing. His syncopal episodes per his wife may be seizures but presentation is atypical. This may also be vasovagal or cardiac etiology. Will continue mechanical ventilation and wean off sedation as tolerated before pursuing further workup.

(EX 4, p. 0074).

The claimant was seen on the afternoon of March 11, 2021, by Dr. Edmundo Rubio. **(EX 4, p. 0103)**. Dr. Rubio noted the claimant's episodes of headache and aura the claimant reported experiencing after his 2015 accident.

The claimant was seen by Dr. Sarah Stewart on the evening of March 11, 2021. **(EX 4, p. 0116)**. Dr. Stewart notes:

> Spoke with nursing who reported that patient and patient's wife told nursing he was electrocuted leading to admission. Spoke with patient and his wife, both report that the patient was working on a line that was not grounded and he felt a shock go in to his left index finger, flinched and then his [sic] his elbow on the line before he went down. Events after that he reports are unclear. He does not remember the AED. Wife confirms story. On physical exam left index finger has noted dried blood in the paronychia, a 2cm region of erythema over the left olecranon, and a 2cm lesion in the toe webspace on the left foot between the 4th and 5th digit.

The claimant was seen by Dr. Mohammad Nimer at midday on March 12, 2021. **(EX 4, p. 0124).** Dr. Nimer noted:

> Unclear if patient was electrocuted or had a seizure as his co-worker was with him holding the line and states it was grounded and there was no electricity in it. Patient does have a wound on his finger but states he acquired this before the event.

A nursing note prepared by Teresa Walton, R.N. on the evening of March 12, 2021, **(EX 4, p. 0127)** states:

> Very slight pinkish area noted to left elbow. Scab area noted to left index finger that pt stated was present before the incident that brought him to the hospital. Pt stated he does not remember anything about the incident that brought him to the hospital.

The claimant was seen by Dr. Chelsea Ryan on the morning of March 13, 2021. **(EX 4, p. 0128)**. Dr. Ryan noted an episode of lightheadedness, palpitations, and nausea the previous night with no loss of consciousness. The claimant reported having these episodes since his MVA years ago, that they typically last for 30 minutes, and that he has these monthly.

The claimant was seen by Dr. Carl Musser and Dr. Johnathan Hilliard for a cardiology assessment on the morning of March 13, 2021. **(EX 4, p. 0089)**:

> 25M admitted 3/11 after sudden LOC with seizure like activity while holding a grounded power line. . .2 other linemen hold same power line without apparent electrocution. Patient has experienced several llghtheaded spells throughout his adult life without frank syncope but typically with prodrome of anxiety, diaphoresis and heart racing. Usually last 1-2 minutes and resolves after cold drink with no lingering symptoms.
>
> * * * *
>
> Patient's syncope very concerning for primary arrhythmia issue as I do not believe he was electrocuted. I am more concerned for either primary arrhythmia disorder including Brugada, LQTS, CPVT. Structural abnormalities such as ARVC, HCM, LVNC should be ruled out as well with cMRl.

The consult note continues:

> CC: “l had a seizure”
>
> HPI: The patient is a 25-year-old male with past medical history significant for ADHD, anxiety, prior tobacco use, questionable von Willebrand’s disease (per report) who works as an electrical line engineer. He states that he was working yesterday on a nonactive power line when he subsequently fell over and started foaming at the mouth. He was holding a line for a coworker in addition to a few other individuals who are also holding the same electrical power line as well. None of the other coworkers were shocked or had any other injury.
>
> * * * *
>
> He states that he has passed out before, however has never foamed at the mouth. He has no history of seizures no family history of this either. No personal history of cardiac disease. He does have a grandmother with history of coronary disease. During prior episodes, he states that it feels as if the curtain is coming down and he gets dizzy.

(EX 4, p. 0089-0090). Dr. Musser’s assessment continues:

> Syncope versus seizure: Unclear as to what his true etiology of this event was. History and symptoms are suggestive of possible seizure activity, especially given that bystanders noticed that he was shaking and foaming at the mouth. He denies any prodromal symptoms which is also concerning. He states that this is happened before and he has mentioned it to healthcare providers, however no further work-up has been obtained.
>
> * * * *
>
> Well cardiac arrhythmia certainly is on the differential, I am less suspicious that this is the case. Would prioritize other etiologies including CNS pathology (consider obtaining brain MRI and/or EEG) to rule out intracranial lesions or seizure activity.
>
> * * * *
>
> As stated above, would pursue other etiologies. CNS lesions certainly remain on the differential, would consider discussion with neurology and obtaining possible brain MRI for more advanced imaging. Would also consider EEG to rule out seizure activity. Would consider discussing with pharmacy ensuring there are no reasons to adjust any medications that he is currently on.

(EX 4, p. 0093).

The clamant was seen by Drs. Kindsey Bierie and Yunan Wang on the morning of March 15, 2021. **(EX 4, p. 0138)**. Their note states:

> On rounds, wife states pt. Remembered this am that he resumed phentermine for weight loss (initially prescribed in summer 2020 as seen in PMP records) and was taking this in addition to vyvanse and lexapro prior to this admission.
>
> * * * *
>
> Had previously reviewed PMP with noted phentermine prescription in summer .2020, however no fills after that and pt Initially denied taking. Today, however, pt. Remembers recently resuming this several days prior to inciting event that prompted this hospitalization. Thus, phentermine with its pharmacokinetics certainly could have been the driving factor behind presentation. Will counsel pt. On strict discontinuation of this medication.

The claimant was seen on the morning of March 16, 2021, by Dr. Mit Patel and Dr. Carl Musser for a cardiology follow-up. **(EX 4, p. 0144)**. Dr. Musser noted:

> Patient wisely wishes to remain off Vyvanse which very likely contributed to syncopal event given lack of any objective arrhythmogenic abnormalities thus far.

Dr. Patel noted that "He does report that he takes Vyvanse and phentermine which could have potentially caused a tachyarrhythmia leading to his incident." **(EX 4, p. 0145)**.

The claimant was seen by Dr, Chelsea Ryan on the afternoon of March 16, 2021, **(EX 4, p. 0148)**. Dr Ryan noted:

> Patient later noted that he started taking phentermine on top of his daily Vyvanse. Unsure if this contributed to his reported cardiac arrest.
>
> Patient also states he and his family have no history of seizures. CT head negative for acute findings. He endorses MVA in 2015 with concussion. He has since had episodes of lightheadedness and a feeling of "cold water running down his back" He endorses these every 6 months but states they have been happening monthly more frequently. They usually last 30 minutes.

On March 16, 2021, the claimant was seen before discharge by Dr. Chelsea Ryan; Dr. Ryan advised the claimant not to take Phentermine with Vyvanse and to speak with his primary care physician about whether Vyvanse is necessary. **(EX 4, p. 0075).** The Primary Discharge Diagnosis was listed as acute encephalopathy.

The discharge note stated that the claimant presented on March 10, 2021, with "with witnessed syncopal episode and seizure-like activity at work. Patient is an electrical lineman and fell over while working on a power line, unclear if he was electrocuted. It is reported that multiple coworkers were holding the electric line at the time of the event. **(EX 4, p. 0078)**. Additionally:

> Patient later noted that he started taking phentermine on top of his daily Vyvanse. Unsure if this contributed to his reported cardiac arrest. Patient was discharged with implantable loop recorder.

Of record are office visit notes from Summers County ARH Fam Care Clinic dated Match 23, 2021 and April 6, 2021. **(EX 5)**. On March 23, 2021, Crystal Mitchell, P.A., noted that the claimant "passed out at work, unsure of the reason, cause." **EX 5, p. (0168)**. The note further states:

> Apparently, he had started taking Phentermine with Vyvanse before onset of these symptoms. Obtain records from hospitals that he was admitted to. He wishes to stay off of Vyvanse for now considering his episode and he agrees to never take Phentermine again. He is going to remain off work for the next couple of weeks. He is unsure if he ever saw Dr. Vaught as we had referred him. He is going to discuss with his wife.

(EX 5, p. 0169). On April 6, 2021, Ms. Mitchell noted:

> Patient follows up on recent cardiac arrest and warts. He has not had any chest pain, dizziness, LOC, or SOB since incident. Feels that his memory has improved since last month. He has still not seen neurologist. He has not taken any stimulants and feels that his ADHD is fair without Vyvanse. Still has no desire to take Vyvanse at this time d/t his experience. He is eating well, sleeping well, and would like to go back to work on a light duty until he sees neurologist.

(EX 5, p. 0172).

Of record is an office visit note from Dr. Barry Vaught dated April 12, 2021. **(EX 6)**. Dr. Vaught noted:

> Mister Bolling is referred for evaluation of memory changes following an injury that occurred last month. On March 10, he had some sort of cardiac arrest. He thinks is probably from an electrical injury but is not really sure. There is some controversy about whether this was an electrical injury or spontaneous medical event.

(EX 6, p. 0175).

Of record is the November 29, 2021, affidavit of Dr. Carl Musser, in which he states that he performed a significant amount of testing in order to determine the source of the claimant's cardiac compromise. **(EX 20)**. None of those tests showed a structural reason for the cardiac event suffered by the claimant. Because he was unable to confirm the source of the cardiac compromise, a surgical implantable cardiac loop recorder was placed in the claimant. The cause of his episode was not determined upon the claimant's hospital discharge. No life-threatening arrhythmias were observed following placement of the implantable loop recorder. Dr. Musser stated that he had initially discounted the possibility of an electrical shock injury because it had been reported that others were working on the line, and that the line was grounded. Upon hearing that one of the claimant's co-workers received a shock from the line later in the day, Dr. Musser opined that he believed the claimant sustained an electrical shock injury.

Dr. Musser's testimony was obtained by deposition on January 27, 2022. Dr. Musser testified the claimant had no detectable arrhythmias at the time of his monthly checks of the implanted cardiac loop recorder. **(EX 14, p. 0306)**. In response to the question regarding interactions between Vyvanse, Lexapro and buspirone, Dr. Musser stated the use of those medications, and their interaction was outside of his realm of expertise. **(EX 14, p. 0309)**. When asked about the claimant's use of phentermine Dr. Musser testified phentermine can elevate blood pressure and heart rate and it could

have effects on the hearts electrical system but was apparently unaware the claimant was taking phentermine in combination with Vyvanse immediately prior to his incident of March 10, 2021. **(EX 14, p. 0311)**. Dr. Musser testified that "it would be pure speculation on my part" as to whether there was an electrical charge on the transmission line at the time the claimant collapsed. **(EX 14, p. 0311-0312)**. When asked about the other men holding the transmission line at the time the claimant collapsed, Dr. Musser testified:

> Q. Okay. There were -- were other workers at the same time holding onto the line, would you expect that one of those other workers would have noticed some current in the line?
>
> A. I suppose, you know, that definitely would go beyond my expertise. You know, even as a heart rhythm specialist, as far as electrocution, but I would presume anybody holding the line who was, you know, in touch with the ground would have received some degree of current from that line.
>
> Now, I don't recall – I mean, I recall his wife telling me that there were others holding the line. I don't – I don't recall if she told me how many individuals or where they were situated relative to The claimant, but I would expect – I would have expected others to have been affected by the current if they, in fact, were holding the line, particularly in close proximity to him at that time.

Regarding the basis for his opinion, Dr. Musser testified that it was premised on the fact that current was detected on the line later in the day:

> THE WITNESS: It would be my op1n1on that -- that the claimant did receive current just on the basis of that inconsistent measurement on the line.
>
> BY MR. MURDOCK: When you say inconsistent measurement, inconsistent from what event to what event?
>
> A. Well, I think inconsistent in the -- based on the fact that at different points in time, it was reported that there -- there was not current on the line and then later there was current on the line. That, to me, puts into doubt that that line was properly and reliably grounded, including the time frame that The claimant was holding the line.

Q. I – I understand that it puts it 1n doubt and that's sort of the -- the root of this case, but 10 there's -- there's a difference between doubt and certainty, isn't there?

A. For sure there's a difference there. I mean, I think, you know, as a -- as an individual that was, you know, evaluating him, you know, in the hospital and without both the expertise of how a jobsite is secured and, you know, all the different processes that are put in place to -- to do that kind of job, you know, I – I clearly can't say with certainty. I can only go by the you know, the factors presented in the deposition and as you summarized it there.

Q. Right. And the fact that there were other men holding the line at the same time, what impact would that have on your conclusion?

A. Well, I think although in most instances you would expect others to be affected by that current, there's also the whole issue of path of least resistance in a current traveling through a wire. So depending on how the individuals are situated relative to where the current was coming from, their contact with the ground -- current is going to flow through the -- the electrical least resistive path, so -- in which case there would not necessarily be a -- you know, a similar amount of current that -- that is experienced in each Individual. So even under that circumstance, even if the others did not -- were not electrocuted or did not, you know, sustain any or visibly or physically feel any current from the line, it's still possible that that current preferentially traveled through The claimant's body.

Q. You said it's possible that that happened?

A. Yes.

Q. Now, again, with regard to that issue, you're -- it's not really a medical question. It's more of a -- I guess a question of engineering or physics.

A. Yeah, yeah. That -- you know, to be perfectly, you know, honest here, I mean, that isn't my area of expertise, but in terms of just electrical theory, you know, electricity is going to follow the path of least resistance.

(EX 14, pp. 0317-0320). Dr. Musser testified that it is not uncommon for him to have patients who have suffered a cardiac event of unknown etiology and no residual arrhythmias. **(EX 14, p. 0321).**

Of record is the medical records review report of Dr. ChuanFang Jin, dated June 6, 2022. **(EX 9)**. Dr. Jin notes that cardiac injury due to electrocution would result in heart injury, and would be indicated by cardiac enzyme elevation and ventrical arrythmias that are not present in this case. Dr. Jin's review of the medical record revealed no evidence of heart injury due to electrocution, and no evidence of electrical injury to other systems that can be supportive evidence of electrocution, such as neurological or musculoskeletal injury, and no entry and exit wounds noted during the evaluations. Dr. Jin also notes that Vyvanse and Phentermine are both stimulants that can cause seizures, and if taken with Lexapro can increase serotonin levels, which can increase seizure activity. Dr. Jin concluded that the most likely etiology of the claimant's collapse on March 10, 2021, was a seizure that caused cardiac arrythmia/arrest.

Of record is the July 25, 2022, medical records review report of Dr. Marsha Bailey. **(EX 10).** Dr. Bailey noted that the medical records contained no evidence of electrical injury:

> Should The claimant have suffered an electrical injury and entrance and exit burn wounds would have been obvious. The claimant's cardiac evaluation on his date of admission included negative cardiac enzymes. Throughout the remainder of his hospitalization, The claimant was thoroughly evaluated by Dr. Musser and his Associates and no cardiac source or damage was identified as the cause or result of the incident that occurred at work on March 10th, 2021.

(EX 10, p. 0194). Dr. Bailey, like Dr. Jin, also noted the effects of the claimant's medications and their interaction, and opined that the March 10, 2021, incident was caused by "a dangerous and likely unintentional prescription stimulant overdose, which lowered his seizure threshold and resulted in the seizure that was witnessed by his Coworkers and post seizure or postictal state, witnessed by his EMS caregivers." **(EX 10, p. 0197).**

Of record is the report of John Averrett, PE, LEED AP. **(EX 11)**. Mr. Averrett's engineering opinion is the only engineering opinion of record, and is uncontested. Mr. Averrett's opinion is consistent with the medical evidence and the opinions of Drs. Jin and Bailey in that if the claimant received an electrical shock, there would have been physical evidence of the shock on his body in the form of an entry and exit wound. Most importantly, Mr. Averrett notes that none of the other men holding the line at the time the claimant collapsed received any shock whatsoever, opining, "It is impossible for only one person to receive a shock if four people are holding the line."

V. ARGUMENT

West Virginia Code § 23-4-1g provides that the resolution of any issue before the Office of Judges shall be based on a weighing of all evidence pertaining to the issue and a finding that a preponderance of the evidence supports the decision reached by the Administrative Law Judge. W.Va. Code § 23-4-1g. The resolution of issues in claims for workers' compensation must be decided on the merits and not according to any principal that requires statutes covering the workers' compensation to be liberally construed because they are remedial in nature. Id.

The Workers' Compensation Fund was created and exists only for the payment of compensation for work-related injuries and is not a health and accident fund. Barnett v. State Workman's Comp. Comm'r, 153 W. Va. 796, 799, 172 S.E.2d 698, 700 (1970).

"[T]he Commissioner shall disburse the workers' compensation fund to the employees… [who] have received personal injuries in the course of and resulting from their covered employment…." W. Va. Code § 23-4-2.

"In order to establish compensability an employee who suffers a disability in the course of his employment must show by competent evidence that there was a causal connection between such disability and his employment." Deverick v. State Workmen's Comp. Dir., 150 W. Va. 145, 144 S.E.2d 498, Syl. pt. 1 (1965).

Awards should not be paid out of the Workers' Compensation Fund "unless there be a satisfactory and convincing showing" that the claimed disability actually resulted from the claimant's employment. Whitt v. State Workmen's Comp. Comm'r, 153 W. Va. 688, 693, 172 S.E.2d 375, 377 (1970) (quoting Machala v. Comp. Comm'r, 108 W. Va. 391, 397, 151 S.E. 313 (1930)).

Furthermore, "it is unquestioned that when one incurs a disability personal to his own condition of health, though the disability may occur in the course of employment, it is not compensable." Jordan v. State Workmen's Comp. Comm'r, 156 W. Va. 159, 164, 191 S.E.2d 497, 500 (1972) (citing Martin v. State Comp. Comm'r, 107 W. Va. 583, 149 S.E. 824 (1929).

Thus, it is the claimant's burden here to show, by "satisfactory and convincing" evidence, "competent evidence," that there was a causal connection between his seizure and his employment. The claimant has failed to do so. The medical evidence of record fails to establish any indication of an electrical injury, and the scientific evidence establishes that the claimant could not have sustained an electrical injury under the circumstances present on March 10, 20921, when he suffered his seizure. In holding the claim compensable, the Board arbitrarily failed to engage in any meaningful review or analysis of the medical or scientific evidence, and instead simply adopted the speculative and unsubstantiated opinion of Dr. Musser.

The medical evidence fails to establish an electrical injury. However, the Board of Review failed to address some of the most important medical evidence. For example, the Board failed to provide any meaningful analysis of the evidence that the claimant was taking Phentermine, Lexapro and Vyvanse – as well as using cannabis – at the time he collapsed. The significance of the claimant's use of Phentermine was evident early in this case. The records from his hospital stay cited above confirm that he reported resuming use of this drug shortly before his seizure on March 10, 2021. At his deposition on December 21, 2021, the claimant testified that when he told hospital personnel that he

had resumed taking Phentermine, it was "inaccurate," that when he was hospitalized he "couldn't remember much of nothing," and that he was "one hundred percent positive" that he had not taken Phentermine since July if 2020. **(E 15, pp. 0350-0351)**. However, the claimant also reported resuming his use of Phentermine to Crystal Mitchell on March 23, 2021, nearly two week safter his seizure. That the Board arbitrarily decided not to address in any meaningful way the interaction of the medications the claimant was taking is significant, because the medical evidence establishes that it was a significant concern. Setting aside the reports of Drs. Jin and Bailey, which were virtually ignored by the Board, numerous physicians expressed concern about the interaction of the claimant's medications, particularly Phentermine. Drs. Kindsey Bierie and Yunan Wang noted that "phentermine with its pharmacokinetics certainly could have been the driving factor behind presentation" indicated that they would "counsel pt. On strict discontinuation of this medication." **(EX 4, p. 0138)**. On March 16, 2021, Dr. Musser noted that "Patient wisely wishes to remain off Vyvanse which very likely contributed to syncopal event given lack of any objective arrhythmogenic abnormalities thus far." **(EX 4, p. 0144)**. Dr. Mit Patel noted that "He does report that he takes Vyvanse and phentermine which could have potentially caused a tachyarrhythmia leading to his incident." **(EX 4, p. 0145)**. Dr. Chelsea Ryan noted:

> Patient later noted that he started taking phentermine on top of his daily Vyvanse. Unsure if this contributed to his reported cardiac arrest.

On March 16, 2021, the claimant was seen before discharge by Dr. Chelsea Ryan; Dr. Ryan advised the claimant not to take Phentermine with Vyvanse and to speak with his primary care physician about whether Vyvanse is necessary. **(EX 4, p. 0075).** Crystal Mitchell then discontinued the claimant's use of Vyvanse, and the claimant himself acknowledged the importance of this issue by agreeing to never take Phentermine again. **(EX 5, p. 0169)**. Thus, while numerous physicians in the record – including

Dr. Musser – had expressed concern about the claimant's medications and their relationship to the March 10, 2021, incident, the Board entirely ignored this issue.

The Board also completely failed to address the issue of the lack of entry and exit wounds. The claimant submitted into evidence a single medical record, a March 10, 2021, "admission note" of Sarah Stewart, D.O. **(EX 7, p. 0177)**. That note indicates that the claimant reported being "electrocuted," and that on physical examination, "left index finger has noted dried blood in the paronychia, a 2cm region of erythema over the left olecranon [elbow], and a 2cm lesion in the toe webspace on the left foot between the 4th and 5th digit." However, the claimant later confirmed that the injury to his finger was pre-existing **(EX 4, p. 0124; EX 4, p. 0128)**, and there is no confirmation in the medical records or elsewhere that the sore on the claimant's foot was in any manner an electrical wound. Both Dr. Bailey and Mr. Averett noted that entry and exit wounds would be expected and were lacking. This is additional evidence that the claimant did not receive an electrical injury. Additionally, there is no medical evidence of any electrical injury to the heart whatsoever: no elevated cardia enzymes, no arrythmia, no cardiac abnormality.

The Board's evaluation of the scientific evidence was capricious and entirely based on mischaracterization of the record. In addressing the reports from AEP and John Averett, the Board stated:

> The record contains an incident investigation report initiated by AEP Transmission and a separate report by John Averrett, an electrical engineer with 25 years. experience. The conclusion from these reports is that the line was safe at the time the claimant was handling it and the claimant could not have been shocked. However, Mr. Averrett acknowledged that there was a question in his mind of whether or not there was detectable voltage on the line at the time of the claimant's incident.

(EX 1, p. 0006). Thus, the Board provided no analysis or rebuttal to the AEP report, and engaged in an obvious and plain mischaracterization of the record with regard to Mr. Averett's report. In his report,

Mr. Averett notes that the morning following the claimant's seizure, the identical configuration which had existed when the claimant collapsed was recreated, and there was no voltage detected on the line; Mr. Averett states that "Because this same scenario [a charge on the line] could not be replicated the following morning [it] raises a question in my mind of whether or not there was detectable voltage on the line at the time of the incident." **(EX 10, p. 0199-0201)**. When read in the context of his report, Mr. Averett's meaning is clear – he is saying that this is another element that tends to disprove that there was current on the line when the claimant collapsed, and not that he questions whether or not there was detectable voltage on the line at the time of the claimant's incident. Mr. Averett when on to explain further why he has no dount that there was not current on the line at the time the claimant collapsed:

> Moreover, if Mr. Bolling was indeed shocked and other crew members were also holding onto the conductor, they would have received some shock as well as the current would split proportional to the resistance. That is, if current was indeed on the conductor, then each person would have received their pro rata share of current based on their body mass and make up at the time of the incident. It is impossible for only one person to receive a shock if four people are holding the line.

Having disregarded, failed to address, or mischaracterized the entirely of the medical record, the Board then goes on to state why they have relied solely on the opinion of Dr, Musser in this case:

> It is noted that Dr. Musser is a cardiac electrophysiologist which is a sub-specialty within the field of cardiology. Of all the physicians of record weighing in upon the etiology of the claimant's heart distress, he is clearly the most qualified to address this issue. For the purposes of this Order, Dr. Musseris opinions on the etiology of the claimant's heart distress is adopted.

(EX 1, p. 0007). This finding is simply wrong in light of Dr. Musser's testimony. As noted in the cited testimony above, Dr. Musser testified that the potential interaction between the claimant's medications was beyond his expertise, that "it would be pure speculation on my part" as to whether there was an

electrical charge on the transmission line at the time the claimant collapsed, that it was "beyond my expertise" whether the other men holding the line would have experienced a shock if there was voltage in the line, and that his entire opinion was based on there being current on the line later in the day. Dr, Musser agreed that whether it was possible the claimant could be shocked when none of his co-workers were was "a question of engineering or physics" and not medicine. Given that so many elements of this case were outside Dr. Musser's expertise, the Board finding that he was most qualified to opine on the etiology of the claimant's seizure on March 10l, 2021, is simply not supported by the Dr. Musser's testimony.

As Dr. Musser testified, his opinion regarding whether the claimant received an electrical shock is entirely speculative, and hinges on the entire premise of this case: that since there was measurable current on the line on the afternoon of March 10, 2021, the claimant must have received a shock several hours earlier, on the morning of March 10, 2021. This conclusion has no basis in medicine, no basis in science, and is disproven by the simple fact that four men were holding the line when The claimant collapsed, and none of the other men noticed any current whatsoever on the line. As Mr. Averett specifically noted, as common sense would tell us, and as even Dr. Musser conceded, had there been any current on the line on the morning of March 10, 2021, all of the men holding onto the transmission line would have been impacted by that current. We know there was no current on the line because, as Mr. Averett stated, "It is impossible for only one person to receive a shock if four people are holding the line." Mr. Averett is a Professional Electrical Engineer with 25 years of experience with electrical systems. Unlike Dr. Musser, who admitted that these questions are beyond his expertise, this question is squarely within the expertise of Mr. Averett, and his expert opinion on this question is uncontested and unrebutted. There is a question as to how current may have built up in the line over the course of the day while The claimant's co-workers were tending to his medical

emergency. But there is no question that there was no current on the line at the time of The claimant's incident, because it is impossible that the other men would not have received any shock whatsoever.

The conclusions of the Board as set forth in the Board's October 2, 2022, Order are based on speculation, and are not supported by the evidentiary record. The Board failed to adequately address the record, which led to the Board's reaching its speculative conclusions. When properly reviewed, the record plainly establishes that the claimant did not receive an electrical injury on March 10, 2021, but instead suffered an idiopathic event of unknown etiology most likely caused by the interaction of his prescription medications. As such, the Board's conclusions are clearly wrong, and the Board's October 2, 2022, Order should be reversed.

V. CONCLUSION

For the foregoing, the employer requests that the October 2, 2022, decision of the Board of Review be REVERSED, and the May 19, 2021, order of the Claims Administrator rejecting the claim REINSTATED.

Respectfully submitted,
QUANTA SERVICES, INC.,

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No. _____

BEFORE THE STATE OF WEST VIRGINIA
INTERMEDIATE COURT OF APPEALS

QUANTA SERVICES, INC.,
Petitioner,

v. **JCN: 2021018967**

ZACHARY BOLLING

Respondent.

CERTIFICATE OF SERVICE

I, Daniel G. Murdock, legal counsel for the employer, do hereby certify that copies of the foregoing "*Petition for Appeal from a Decision of the Workers' Compensation Board of Review*," and "*Petitioner's Appendix*," were served upon the parties of record this 8th day of November, 2022, by forwarding a true copy thereof through the File & Serve Xpress e-filing system, to the following:

Kelly Elswick-Hall, Esq.
The Masters Law Firm, LC
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_____
Daniel G. Murdock (W.V.S.B. 8979)