

**IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA**

**BLACKHAWK MINING, INC.,  
Employer Below, Petitioner**

v.) No. 24-ICA-7 (JCN: 2022013074)

**EDDIE NORMAN,  
Claimant Below, Respondent**

**FILED  
March 25, 2024**

C. CASEY FORBES, CLERK  
INTERMEDIATE COURT OF APPEALS  
OF WEST VIRGINIA

**MEMORANDUM DECISION**

Petitioner Blackhawk Mining, Inc. (“Blackhawk”) appeals the December 7, 2023, order of the Workers’ Compensation Board of Review (“Board”). Respondent Eddie Norman filed a response.<sup>1</sup> Blackhawk filed a reply. The issue on appeal is whether the Board erred in reversing the claim administrator’s order, which granted Mr. Norman an 8% permanent partial disability (“PPD”) award, instead granting an additional 12% PPD award, for a total PPD award of 20%.

This Court has jurisdiction over this appeal pursuant to West Virginia Code § 51-11-4 (2022). After considering the parties’ arguments, the record on appeal, and the applicable law, this Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision affirming the Board’s order is appropriate under Rule 21 of the Rules of Appellate Procedure.

On December 27, 2021, while employed by Blackhawk, Mr. Norman suffered injuries to his lower back and left leg when a rock fell from the roof of the mine and struck him. On the same day, Mr. Norman underwent a lumbar MRI revealing an L1 burst fracture with the posterior fracture fragment displaced six millimeters into the spinal canal. On December 28, 2021, Calvin Curtis Whaley, D.O., a neurologist, examined Mr. Norman and opined that he suffered a compression fracture of the L1 vertebra. The claim administrator issued an order dated January 3, 2022, which held the claim compensable for a closed wedge compression fracture of the first lumbar vertebra.

On June 29, 2022, Mr. Norman underwent a lumbar x-ray. Dr. Whaley reviewed the x-ray and issued a report dated the same day. Dr. Whaley opined that the x-ray revealed an “approximately 51% loss of height.” The report included an impression from Frank Muto,

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<sup>1</sup> Blackhawk is represented by Billy R. Shelton, Esq. Mr. Norman is represented by Robert F. Vaughan, Esq.

M.D., a radiologist, who reviewed the lumbar x-ray. Dr. Muto opined that Mr. Norman suffered “approximately 50% anterior loss of height.”

Mr. Norman was examined by Prasadarao Mukkamala, M.D., on July 13, 2022. Dr. Mukkamala found that Mr. Norman had reached maximum medical improvement (“MMI”) for his compensable injuries. Using the American Medical Association’s *Guides to the Evaluation of Permanent Impairment*, (4th ed. 1993) (“*Guides*”) and West Virginia Code of State Rules § 85-20 (2006) (“Rule 20”), Dr. Mukkamala opined that the claimant had an 8% whole person impairment (“WPI”) related to his compensable injury. Dr. Mukkamala found that Mr. Norman had 5% WPI for an L1 burst fracture, 5% WPI for a fracture of the left L1 transverse process, and 4% WPI for lumbar range of motion abnormalities. Applying Rule 20, Dr. Mukkamala placed Mr. Norman in Lumbar Category II of 85-20-C and adjusted the total WPI to 8%. The claim administrator issued an order dated July 18, 2022, which granted Mr. Norman an 8% PPD award based upon the report of Dr. Mukkamala. Mr. Norman protested this order.

On March 14, 2023, Mr. Norman was examined by Bruce Guberman, M.D. Dr. Guberman found that Mr. Norman had reached MMI for the compensable injury. Using the *Guides* and Rule 20, Dr. Guberman found that Mr. Norman had 20% WPI related to his compensable injury. Dr. Guberman found that Mr. Norman had 12% WPI for greater than 50% compression fracture at L1, 5% WPI for a fracture of the left transverse process, and 5% WPI for range of motion abnormalities in the lumbar spine. Based on Dr. Whaley’s report, Dr. Guberman placed Mr. Norman in Lumbar Category IV of 85-20-C and adjusted the total WPI to 20%. Dr. Guberman opined that Mr. Norman would be entitled to an additional 12% PPD due to the compensable injury for a total of 20% PPD.

On December 7, 2023, the Board reversed the claim administrator’s order, which granted Mr. Norman an 8% PPD award, and instead granted him an additional 12% PPD award, for a total PPD award of 20%. The Board found that Dr. Guberman’s report was supported by the weight of the medical evidence. Blackhawk now appeals the Board’s order.

Our standard of review is set forth in West Virginia Code § 23-5-12a(b) (2022), in part, as follows:

The Intermediate Court of Appeals may affirm the order or decision of the Workers’ Compensation Board of Review or remand the case for further proceedings. It shall reverse, vacate, or modify the order or decision of the Workers’ Compensation Board of Review, if the substantial rights of the petitioner or petitioners have been prejudiced because the Board of Review’s findings are:

- (1) In violation of statutory provisions;
- (2) In excess of the statutory authority or jurisdiction of the Board of Review;
- (3) Made upon unlawful procedures;

- (4) Affected by other error of law;
- (5) Clearly wrong in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

*Duff v. Kanawha Cnty. Comm'n*, 247 W. Va. 550, 555, 882 S.E.2d 916, 921 (Ct. App. 2022).

On appeal, Blackhawk argues that Mr. Norman had the burden of proving by a preponderance of the evidence that he was entitled to more than the 8% PPD awarded by the claim administrator, and he clearly failed to meet this burden. Blackhawk further argues that the preponderance of the evidence fails to establish that Mr. Norman's injury falls within Lumbar Category IV of Table 85-20-C. Blackhawk then contends that, at most, the evidence would support a 25%-50% compression fracture, which under Lumbar Category III of Table 85-20-C would entitle Mr. Norman to a 10%-13% WPI rating. We disagree.

Here, the Board found that Mr. Norman established that he has 20% WPI related to the compensable injury, based on the medical evidence. The Board found that Dr. Guberman's report was the most persuasive and was supported by the weight of the medical evidence. The Board noted that Dr. Mukkamala did not address the findings by Dr. Whaley or Dr. Muto in his report. Further, there is no medical evidence to support Blackhawk's theory that, at most, Mr. Norman should have been placed under Lumbar Category III of Table 85-20-C for an impairment rating of no more than 13%.

Upon review, we find that the Board was not clearly wrong in finding that Mr. Norman established that he has 20% WPI related to the compensable injury, based on the medical evidence. Further, we find that the Board was not clearly wrong in finding that Dr. Guberman's report was the most persuasive because his findings were supported by Dr. Whaley's report. We note that Dr. Mukkamala's findings vastly differed from both physicians who reviewed the x-rays, which he did not address in his findings.

Accordingly, we affirm the Board's December 7, 2023, order.

Affirmed.

**ISSUED:** March 25, 2024

**CONCURRED IN BY:**

Chief Judge Thomas E. Scarr  
Judge Charles O. Lorensen  
Judge Daniel W. Greear