

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

**CITY OF CHARLESTON,  
Employer Below, Petitioner**

v.) No. 23-ICA-514 (JCN: 2023013868)

**ISAAC Z. BRUNETTI,  
Claimant Below, Respondent**

**FILED  
April 22, 2024**

ASHLEY N. DEEM, DEPUTY CLERK  
INTERMEDIATE COURT OF APPEALS  
OF WEST VIRGINIA

**MEMORANDUM DECISION**

Petitioner City of Charleston (“Charleston”) appeals the October 18, 2023, order of the Workers’ Compensation Board of Review (“Board”). Respondent Isaac Z. Brunetti did not file a response.<sup>1</sup> The issue on appeal is whether the Board erred in reversing the claim administrator’s order, which rejected the claim.

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 January 15, 2023, while employed by Charleston, Mr. Brunetti suffered an injury to his low back when lifting a patient during transport. Mr. Brunetti signed an Employees’ and Physician’s Report of Occupational Injury on January 16, 2023, indicating that he is a firefighter/paramedic and hurt his back/spine, an acute exacerbation of a previous injury, when he was unloading a stretcher with a patient on it. The physician’s portion signed on January 16, 2023, by Dr. Brash, noted low back pain and reported that the injury aggravated a prior work injury. The listed diagnosis code was M54.5, low back pain. On January 18, 2023, the claim administrator issued an order rejecting the claim on the basis that the injury was an aggravation of a previous injury. Mr. Brunetti protested this order.

Mr. Brunetti completed a second Employees’ and Physician’s Report of Injury dated January 20, 2023, indicating that he suffered a low back/spine injury when he was removing an overweight patient from an ambulance on January 15, 2023. The physician’s portion, dated January 20, 2023, listed a lifting injury that aggravated a prior back injury

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<sup>1</sup> Charleston is represented by James W. Heslep, Esq. Mr. Brunetti did not appear.

from 2021.<sup>2</sup> The diagnoses listed were radiculopathy in the lumbar region and overexertion from strenuous movement.

On October 18, 2023, the Board reversed the claim administrator's order, which rejected the claim, and remanded the claim back to claim administrator to address Mr. Brunetti's entitlement to temporary total disability benefits. The Board found that Mr. Brunetti established that he suffered a discrete new injury in the course of and resulting from his employment. Charleston 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, Charleston argues that Mr. Brunetti identifies symptoms in his Reports of Injury rather than acute injuries. Charleston further argues that the evidence of record indicates that Mr. Brunetti should have sought treatment for his symptoms under his prior compensable 2021 claim, instead of filing a new claim for the symptoms. We disagree.

Here, the Board found that Mr. Brunetti sustained a discrete new injury in the course of and resulting from his employment on January 15, 2023. The Board noted Mr. Brunetti's

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<sup>2</sup> Mr. Brunetti suffered a low back injury at work on November 6, 2021. Mr. Brunetti filed an Employees and Physician's Report of Injury dated November 13, 2021, indicating that he sustained a back injury when he was lifting a patient into an ambulance. The diagnoses listed were low back strain and back pain. It appears from documentation in the record that this claim was rejected.

similar prior work injury occurring in 2021, but it found that the diagnosis codes cited in the 2023 Report of Injury were different from the diagnosis codes cited in the 2021 Report of Injury. Ultimately, the Board found that it was clear that Mr. Brunetti suffered a discrete new injury rather than an aggravation of his 2021 work injury.

Upon review, we find that the Board was not clearly wrong in finding that Mr. Brunetti suffered a discrete new injury on January 15, 2023, rather than an aggravation of his prior 2021 injury. We note that Mr. Brunetti had returned to work with no restrictions following his 2021 injury. We agree with the Board that there is adequate evidence in the instant case to find that Mr. Brunetti suffered a discrete new injury on January 15, 2023, rather than an aggravation of his prior 2021 injury. As the Supreme Court of Appeals of West Virginia has set forth, “[t]he ‘clearly wrong’ and the ‘arbitrary and capricious’ standards of review are deferential ones which presume an agency’s actions are valid as long as the decision is supported by substantial evidence or by a rational basis.” Syl. Pt. 3, *In re Queen*, 196 W. Va. 442, 473 S.E.2d 483 (1996). With this deferential standard of review in mind, we cannot conclude that the Board was clearly wrong in reversing the claim administrator’s order, which rejected the claim.

Further, we find no merit in Charleston’s argument that Mr. Brunetti’s Reports of Injury identify symptoms rather than acute injuries. We note that the diagnoses listed on Mr. Brunetti’s January 20, 2023, Report of Injury are radiculopathy in the lumbar region and overexertion from strenuous movement. In its brief, Charleston indicates that it considers these diagnoses to be symptoms rather than compensable diagnoses. However, Charleston fails to otherwise explain why those diagnoses should not be held compensable nor does it cite any persuasive authority on this issue.

Accordingly, we affirm the Board’s October 18, 2023, order.

Affirmed.

**ISSUED:** April 22, 2024

**CONCURRED IN BY:**

Judge Charles O. Lorensen

Judge Daniel W. Greear

Chief Judge Thomas E. Scarr, not participating