

BEFORE THE WEST VIRGINIA INTERMEDIATE COURT OF APPEALS  
CHARLESTON, WEST VIRGINIA

Blackhawk Mining, LLC, Employer,

Petitioner,

v.

Harris Argabright, Employee,

Respondent,

ICA No.:

BOR No. 2058334

JCN: 2021020512

DOI: 02/25/2021

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BRIEF ON BEHALF OF PETITIONER  
BLACKHAWK MINING, LLC

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Jeffrey B. Brannon, Esq.  
*WV Bar ID # 7868*  
Cipriani & Werner, P.C.  
500 Lee Street East, Suite 900  
Charleston, WV 25301

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## **II. ASSIGNMENTS OF ERROR**

1. THE BOARD OF REVIEW WAS CLEARLY WRONG IN AFFIRMING THE ADDITION OF DISC BULGING AS A COMPENSABLE CONDITION IN THIS CLAIM AS THE PREPONDERANCE OF THE EVIDENCE SHOWS THE BULGES WERE PRE-EXISTING AND ARE DEGENERATIVE IN NATURE AND THEREFORE NOT RELATED TO THE COMPENSABLE LUMBAR SPRAIN

## **III. STATEMENT OF THE CASE**

The claimant, Harris Argabright, an electrician for the employer, is presently 58 years old with a dated of birth of September 23, 1963. The employer requests that this Court take judicial notice of the WVOIC Claims Index, which shows the claimant previously filed a West Virginia workers' compensation claim for his low back for a December 3, 2022, injury. As a result of that injury, the claimant was diagnosed with a lumbar sprain. (Exhibit A) The claimant also filed four (4) additional claims for his right finger, left ankle, trunk, and lungs.

The claimant completed Section I of a WC-1 on February 26, 2021. He indicated that he injured his lower back/pelvis area, and specifically described his injury, as follows: “**tightened a strap on a speed reducer. As he was tugging he felt something pull.**” Section II of this form was completed by a physician at Family Healthcare Associates on February 26, 2021. This physician indicated that the claimant sustained a *lumbar sprain*. The claimant was advised to remain off of work. (Exhibit B)

The claimant underwent an x-ray of his lumbar spine on February 26, 2021. The impression of this study was, as follows:

No acute lumbar spine abnormality demonstrated. The mild grade 1 retrolisthesis of L3 on L4 with mild L3-4 disc space narrowing. This is about the same as previous. Mild L5-S1 disc space narrowing and bilateral facet arthropathy, about the same as previous.

(Exhibit C) Thus, the x-ray performed on the day after the injury revealed that the claimant suffered from preexisting degenerative conditions in his lumbar spine.

The claimant underwent an MRI of his lumbar spine on March 9, 2021. (Exhibit D) The impression of this study was, as follows:

T11/T12: only included on sagittal images. Narrowing of the disc space. **Degenerative disc desiccation. A suggestion of a mild disc bulge.**

Minimal to mild disc bulges from L2/L3 up to L5/S1. No focal disc protrusion seen in the lumbar spine.

Hypertrophy of the posterior elements at several levels. Relative mild acquired narrowing of the canal to borderline central spinal stenosis at L4/L5.

Relative mild acquired narrowing of the canal at L5/S1, but no central spinal stenosis seen.

Narrowing of the neural foramina noted especially, at L4/L5 and L5/S1.

Of incidental note, small single hyperintensities in each kidney that may reflect cysts.

The claimant reported to Jeffrey Prichard, PA-C, on April 26, 2021. Mr. Prichard noted the claimant was there for a follow up on workers comp. The claimant reported pain in the low back with decreased range of motion. Mr. Prichard diagnosed the claimant with lumbar sprain, bulging disc L3-L4; bulging disc L4-L5; and bulging disc L5-S1. Mr. Prichard advised the claimant to return to the clinic if the symptoms worsened. (Exhibit E)

The claimant underwent an IME with Dr. Mukkamala on May 11, 2021. As part of his review of the medical records, Dr. Mukkamala noted:

x-ray lumbar spine dated 2/26/2021 performed by Princeton Community Hospital was reviewed and compare to 6/4/2013 study. Impression: "No acute lumbar spine abnormality demonstrated. The mild grade 1 retrolisthesis of L3-L4 with mild L3-4 disc space narrowing. This is about the same as previous. Mild L5-S1 disc space narrowing and bilateral arthropathy about the same as previous. Electronically signed by Dr. W. Asbury Jr.

Dr. Mukkamala went on to discuss his review of the March 9, 2021, MRI of the lumbar spine. In his review of the records, Dr. Mukkamala noted:

MRI of lumbar spine dated 3/9/2021 performed at Princeton Community Hospital was reviewed and compared to radiographs dated 2/26/2021 of the lumbar spine and radiographs of the thoracic spine on 6/4/2013. Impression: "T11-12: only included on sagittal images. Narrowing of the disc space. Degenerative disc desiccation. A suggestion of mild disc bulge. Minimal to mild disc bulges from L2-3 up to L5-S1. No focal disc protrusion seen in the lumbar spine. Hypertrophy of the posterior elements at several levels. Relative mild acquired narrowing of the canal at L5-S1 but, no central spinal stenosis seen. Narrowing of the neural foramina noted especially at L4-5 and L5-S1.

On examination, Dr. Mukkamala recorded the following:

Examination of the back revealed there was no scoliosis. There was no paraspinal muscle spasm or tenderness. There was no vertebral tenderness. There was no tenderness of the SI joints. The pelvis was level with no leg length discrepancy. The claimant was standing with an antalgic posture. There was tenderness over the left gluteal region.

Lumbar spine flexion was carried out to 54 degrees of which 22 degrees was hip flexion angle leaving a true lumbar flexion of 32 degrees. Lumbar spine extension was carried out to 30 degrees of

which 4 degrees was hip extension angle leaving a true lumbar extension of 26 degrees. Right lateral flexion was carried out to 26 degrees of which 5 degrees was sacral motion leaving a true lumbar motion of 21 degrees. Left lateral flexion was carried out to 24 degrees of which 4 degrees was sacral motion leaving a true lumbar motion of 20 degrees.

Dr. Mukkamala diagnosed the claimant with the following: **lumbar sprain superimposed upon pre-existing, non-compensable, degenerative spondyloarthropathy**. Dr. Mukkamala found he claimant had reached his maximum degree of medical improvement and assessed 8% permanent impairment of which 3% was due to the February 25, 2021, injury.

In addition, Dr. Mukkamala opined there was “no indication” for a referral to Dr. Patel. Dr. Mukkamala stated:

Please note there is no objective medical evidence of radiculopathy and there was no spinal instability and as such, the claimant does not require any surgical treatment. The claimant received adequate physical therapy. Therefore, there is no indication for any further treatment.

(Exhibit F)

The Claims Administrator issued an Order on May 17, 2021, which denied a request for a referral to Dr. Patel. (Exhibit G) The claimant protested this Order.

The claimant reported to Jeffrey Prichard, PA-C, on May 26, 2021, for his low back pain. At this time, the claimant was diagnosed with the following: lumbar sprain, and bulging disc L3-L4, L4-L5, and L5-S1. (Exhibit H)

On June 21, 2021, Dr. Muscari issued a Diagnosis Update form requesting that “disc bulge L2 L3 L5 S1” be added as compensable conditions in this claim. This was due to the fact that the MRI showed multiple disc bulges. (Exhibit I)

By order dated July 1, 2021, the request to add lumbar disc bulges from L2- S1 was denied. (Exhibit J) The claimant protested this order.

The claimant has submitted correspondence from Dr. Michael Muscari dated July 15, 2021, in which he alleges that the referral to Dr. Patel is necessary simply because the claimant



was able to work until this injury and he had allegedly never been seen for lumbar pain that these conditions should be held compensable. (Exhibit K)

Dr. Michael Brooks reviewed the March 9, 2021, MRI and issued an Aging Analysis dated January 15, 2022. (Exhibit L) Dr. Brooks stated as follows in his report:

HISTORY: Approximately two weeks following date of injury, the patient underwent an MRI examination of the lumbar spine. The primary report described essentially multilevel degenerative and facet joint arthrosis.

DISCUSSION: There is shallow disc bulging at L2-3 and L3-4 with ligamentum flavum infolding and mild bilateral facet arthrosis. No central canal stenosis, herniation, or neuroforaminal narrowing. There is disc desiccation at L4-5 with disc level osteophytes and superimposed circumferential disc bulging. Ligamentum flavum infolding and severe facet arthrosis contribute to mild to moderate central canal stenosis. There is also disc desiccation at L5-S1 with circumferential disc bulging and ligamentum flavum infolding contributing to mild central canal stenosis. There is severe facet joint arthrosis with posterolateral osteophytes contributing to moderate bilateral neuroforaminal narrowing.

CONCLUSION: In conclusion, the findings on this MRI examination are chronic and related to degenerative disc disease and facet joint arthrosis.

SUMMARY:

1. **Degenerative disc disease and facet joint arthrosis at L2-3 and L3-4 chronic**
2. **Degenerative disc disease and facet joint arthrosis at L4-5 with mild to moderate canal stenosis – chronic**
3. **Degenerative disc disease and facet joint arthrosis at L5-S1 with mild central canal stenosis and moderate bilateral neuroforaminal narrowing - chronic**

By decision dated May 19, 2022, the Office of Judges reversed the Claims Administrator's orders dated May 17, 2021, and July 1, 2021; ordered the referral to Dr. Patel; and added bulging discs from L2 through S1 as compensable conditions in this claim. (Exhibit M) In doing so, the Office of Judges found as follows:



In the herein claim it appears that before the injury of February 24, 2021, the claimant's preexisting disease or condition was asymptomatic. It further appears that following the injury, symptoms of the disabling condition appeared and continuously manifested themselves. In a report dated April 26, 2021 from PA-C Prichard, it was stated that the claimant was being seen for lower back pain, the claimant stating his back was no better. As stated above the claimant complained to Dr. Mukkamala of symptoms of low back pain with radiation to the left lower extremity. When the claimant was seen by PA-C Prichard on May 26, 2021, he was still having low back pain with radiculopathy and decreased range of motion. The assessment was lumbar sprain; bulging disc (L3-L4); bulging disc (L4-L5) and bulging disc (L5-S1). As noted by Dr. Muscari in the Diagnosis Update the claimant had an MRI (March 9, 2021) which showed multiple disc bulges. An authorization was made by Dr. Muscari for a consult with Dr. Patel stating that the claimant had an increase in pain; decrease in range of motion and that his symptoms were worsening. The findings made by Dr. Patel are persuasive.

Based upon the preponderance of the evidence the claimant has shown that the conditions of Disc Bulge L2, L3, L4 and S1 should be held as compensable component of this claim.

The Board of Review summarily affirmed the Office of Judges in its October 21, 2022, Order. (Exhibit N)

#### **IV. SUMMARY OF ARGUMENT**

This claim is before this Court pursuant to the employer's appeal from the decision of the Board of Review dated October 21, 2022. The Board of Review erroneously affirmed the Office of Judge's reversal of the Claims Administrator's Order dated July 1, 2021, which denied the addition of disc bulge at L2 to S1 as compensable conditions in this claim and instead added those conditions as compensable in this claim. The employer is appealing from this portion of the decision only. The Office of Judges also reversed a referral to Dr. Patel which was denied as related to treatment of these conditions. The employer is not appealing that portion of that decision which authorized treatment with Dr. Pate. The preponderance of the substantial, reliable and probative evidence of record establishes that the disc bulges in the claimant's lumbar spine were pre-existing and not related to the compensable injury in this claim. However, the treatment of that exacerbation or aggravation of the degenerative condition, the disc bulges,

should be authorized under this claim. While these preexisting degenerative conditions may have been aggravated by the compensable injury, they should not be added as compensable conditions in this claim.

The Board of Review's affirmation of the Office of Judge's interpretation of the West Virginia Supreme Court of Appeals decision in Moore v. ICG Tygart Valley, LLC, No. 20-0028 (April 28, 2022) was clear legal error as she clearly misinterpreted and misapplied the holding in that claim. When read together, the West Virginia Supreme Court of Appeals decision in Gill v. City of Charleston, 236 W. Va. 737, 783 S.E.2d 857, 2016 W. Va. LEXIS 61 (W. Va. Feb. 10, 2016) and Moore v. ICG Tygart Valley, LLC, No. 20-0028 (April 28, 2022) require this Board to REVERSE the decision of the Office of Judges dated May 19, 2022, and REINSTATE the Claims Administrators order dated July 1, 2021. The Order of the Board of Review is clearly wrong in light of the reliable, probative and substantial evidence of record, or lack thereof, is arbitrary and capricious and is in violation of the applicable statutes and regulations and should be REVERSED by the Court. Alternatively, the employer requests that this claim be REMANDED to the Office of Judges to permit the employer an opportunity to develop evidence to rebut the presumption set forth in Moore v. ICG Tygart Valley, LLC, No. 20-0028 (April 28, 2022).<sup>1</sup>

#### **V. STATEMENT REGARDING ORAL ARGUMENT AND DECISION**

The facts and legal arguments are adequately presented by the employer's brief and record before the Court. Therefore, the employer respectfully submits that oral argument is not needed for this appeal.

#### **VI. ARGUMENT**

The issue before this Court is whether the Order of the Board of Review dated October 21, 2022, was clearly wrong in light of the reliable, probative and substantial evidence of record, or lack thereof, is arbitrary and capricious and is in violation of the applicable statutes and regulations in reversing the Claims Administrator's order dated July 1, 2021, which denied the

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<sup>1</sup> The Office of Judges submitted the claimant's protest to the July 1, 2021, order denying the addition of the disc bulges as compensable on March 21, 2022, prior to the Moore decision.

addition of disc bulges from L2 to S1 and instead adding those conditions as compensable in this claim. The preponderance of the evidence of record establishes that these conditions are chronic and preexisting and while they have been aggravated or exacerbated they are not a “discreet new injury” under Gill and Moore and thus are not related to the compensable injury in this claim.

This Court is required to reverse a final order of Board of Review when the substantial rights of the petitioner have been prejudiced because that final order is clearly wrong in view of the reliable, probative and substantial evidence on the whole record or is wrong as a matter of law. W. Va. Code § 23-5-12(b)(5)(2005). The West Virginia Supreme Court of Appeals addressing the prior identical standard stated in Rhodes v. Workers’ Compensation Division and Anchor Glass Container, 543 S.E.2d 289, 293 (W. Va. 2000), that “‘when the Workers’ Compensation Appeal Board reviews a ruling from the Workers’ Compensation Office of Judges it must do so under the standard of review set out in W. Va. Code § 23-5-12(b) (1995), and failure to do so will be reversible error.’ Syl. pt. Conley.” The Rhodes court further stated that West Virginia Code § 23-5-12(b) also directs, in relevant part, that:

[The WCAB] shall reverse, vacate or modify the order or decision of the administrative law judge if the substantial rights of the petitioner or petitioners have been prejudiced because the administrative law judge’s findings are:

- 1) In violation of statutory provisions; or
- 2) In excess of the statutory authority or jurisdiction of the administrative law judge; or
- 3) Made upon unlawful procedures; or
- 4) Affected by other error of law; or
- 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.

Rhodes v. Workers’ Compensation Division and Anchor Glass Container, 543 S.E.2d 289, 293 (W. Va. 2000), citing Conley v. Workers’ Compensation Division and Hercules, Inc., 199 W. Va 196, 202, 483 S.E.2d 542, 548 (1997). In the instant claim the decision of the Board of Review

Order is clearly wrong in light of the reliable, probative and substantial evidence of record, or lack thereof, is arbitrary and capricious and is in violation of the applicable statutes and regulations.

Initially, it must be remembered that the claimant bears the burden of establishing his claim. "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 Compensation Director, 150 W. Va. 145, 144 S.E. 2d 498 (1965) (Syl. pt 3). Further, "Where proof offered by a claimant to establish his claim is based wholly on speculation, such proof is unsatisfactory and is inadequate to sustain the claim." Clark v. State Workmen's Compensation Comm'r, 155 W. Va. 726, 187 S.E.2d 213 (1972) (Syl.pt 4). Simply stated, benefits should not be paid from a workers' compensation policy "unless there be a satisfactory and convincing showing" that the claimed disability actually resulted from the claimant's employment. Whitt v. State Workmen's Compensation Comm'r, 153 W. Va. 688, 693, 172 S.E.2d 375, 377 (1970) (quoting Machala v. Compensation Comm'r, 108 W. Va. 391, 397, 151 S.E. 313, 315 (1930)).

Disability is not synonymous with compensability. Compensability refers to an injury from an isolated fortuitous event which occurred in the course of and resulting from employment. Disability is the result of a condition and relates to entitlement to temporary total disability benefits or medical benefits. In the instant claim there is no evidence which establishes that the degenerative disc bulges which were identified on the MRI of the 58 year old claimant were caused by the injury in this claim. While they may have been aggravated or exacerbated by the lumbar sprain in this claim there is no evidence that they were caused by the injury.

Not even under the old "rule of liberality" was the claimant relieved of their burden. In fact, the West Virginia Supreme Court of Appeals previously stated that "[w]hile informality in the presentation of evidence is permitted in workmen's compensation cases and a rule of liberality in favor of the claimant will be observed in appraising the evidence presented, still the burden of establishing a workmen's compensation claim rests upon the one who asserts it and the well-established rule of liberality cannot be considered to take the place of proper and satisfactory proof." Deverick v. State Compensation Director, 150 W. Va.145, 144 S.E.2d 498

(1965) (Syl. Pt 1) (quoting Point 2, Syllabus, Hayes v. State Compensation Director, et al., 149 W. Va. 220). Simply stated, the rule of liberality did not relieve the claimant of the burden of proving his claim. Clark v. State Workmen's Compensation Comm'r, 155 W. Va. 726, 733, 187 S.E.2d 213, 217 (1972); see also Deverick v. State Compensation Director, 150 W. Va. 145, 144 S.E.2d 498 (1965).

Before secondary conditions can be lawfully added to a claim, three elements must coexist in compensability cases: (1) a personal injury, (2) received in the course of employment, and (3) resulting from that employment. Barnett v. State Workmen's Compensation Commissioner, 153 W. Va. 796, 172 S.E. 2d 698 (1970); Jordan v. State Workmen's Compensation Commissioner, 156 W. Va. 159, 191 S.E. 2d 497 (1972). W. Va. Code § 23-4-1 provides "the [Claims Administrator]...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 §23-4-1 (2005). 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 Workmen's Compensation Comm'r, 153 W. Va. 796, 799, 172 S.E.2d 698, 700 (1970). Further, **"...it is...axiomatic that the employer, by subscribing to the workmen's compensation fund, does not thereby become the employee's insurer against all ills or injuries which may befall him."** Jordan v. State Workmen's Compensation Comm'r, 156 W. Va. 159, 165, 191 S.E.2d 497, 501 (1972) (citing Barnett v. State Workmen's Compensation Comm'r, 153 W. Va. 796, 172 S.E.2d 698 (1970) and James v. Rinehard & Dennis Co., Inc., 113 W. Va. 414, 168 S.E. 482 (1933)).

In the instant claim, none of the medical evidence indicates that claimant sustained any injury other than a lumbosacral strain. The evidence does however establish that the claimant is suffering from a preexisting noncompensable degenerative condition of both the lumbar and cervical spines.

The West Virginia Supreme Court of Appeals initially addressed preexisting conditions in the context of claims. The Court in Gill v. City of Charleston, 236 W. Va. 737, 783 S.E.2d 857, 2016 W. Va. LEXIS 61 (W. Va. Feb. 10, 2016) held at Syllabus Point 3 as follows:



A noncompensable preexisting injury may not be added as a compensable component of a claim for workers;' compensation medical benefits merely because it may have been aggravated by a compensable injury. To the extent that the aggravation of a noncompensable preexisting injury results in a discreet new injury, that new injury may be found compensable.

*Id.*

Recently the Supreme Court reaffirmed this syllabus point in Syllabus Point 4 of Moore v. ICG Tygart Valley, LLC, No. 20-0028 (April 28, 2022). The Court then held in Syllabus Point 5 of Moore as follows:

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 other facts of the case, raises a natural inference of causation. This presumption is not conclusive; it may be rebutted by the employer.

*Id.* In discussing Gill the Court stated as follows:

So, a claimant has the burden of proving that the compensable injury exacerbated, accelerated, or worsened the preexisting condition of disease causing a distinct new injury.

*Id.* at 17. In the instant claim there is no dispute that the claimant's bulging discs from L2 to S1 preexisted the injury in this claim. As these are not a "discreet new injury" under Gill and they are not a "disability" under Moore, the Office of Judges was clearly wrong in adding the conditions as compensable in this claim.

In the case *sub judice* the claimant has no new discreet injury. The claimant does however have a documented history of preexisting lumbar injuries and conditions and the only conditions he now suffers from are chronic and degenerative and not injury related. Thus under Gill and Moore bulging discs from L2 through S1 should not be added as a compensable condition in this claim.

Furthermore, the Gill and Moore decisions must be viewed in light of the applicable regulations. §85 CSR 20-21 provides that “the Commission, Insurance Commissioner, private carrier or self-insured employer, whichever is applicable, may pay for treatment of a condition which was not caused by the injury only if the Commission, Insurance Commissioner, private carrier or self-insured employer, whichever is applicable, determines, in its sole discretion, that the unrelated condition is preventing recovery by aggravating the occupational injury. Any unrelated condition must be reported to the Commission, Insurance Commissioner, private carrier or self-insured employer, whichever is applicable, before payment is considered. **Pre-existing conditions which prevent recovery but do not aggravate the compensable injury shall not be covered.**” Under this regulations the inclusion of the preexisting degenerative disc bulges is improper.

Further, §85 CSR 20-37.8 provides that modifiers such as co-morbidity (e.g., degenerative disc disease, spondylolisthesis, segmental instability, osteoporosis, spine deformity) may be associated with a higher incidence of persistent symptoms **but are not compensable conditions**. The evidence clearly establishes that the claimant’s bulging discs are chronic and not injury related. Thus, under this regulation it is improper to add these conditions.

While treatment for the aggravation or exacerbation of the preexisting condition may be medically necessary and reasonably required, clearly these conditions are no “discreet new injur[ies]” but rather preexisting, chronic and degenerative conditions which are not causally related to the injury in this claim.

Here, the evidence shows that the claimant sustained a lumbar sprain. Further, the evidence establishes that the disc bulges are chronic and preexisting. While these may have been aggravated by the injury in this claim they are not compensable. *See also Murray Am. Energy, Inc. v. Barlow*, 2017 W. Va. LEXIS 303, *Dye v. Arcelormittal USA XMB*, 2017 W. Va. LEXIS 199, and *Delaney v. W. Va. Mine Power, Inc.*, 2016 W. Va. LEXIS 270. While the claimant does suffer from disc bulges in his lumbar spine these conditions clearly preexisted the compensable injury in this claim. The October 21, 2022, Order of the Board of Review is clearly wrong in light of the reliable, probative and substantial evidence of record, or lack thereof, is arbitrary and capricious and is in violation of the applicable statutes and regulations.



## VII. CONCLUSION

Based on the facts of this claim, the evidence of record, and the law applicable thereto, the employer requests that this Board REVERSE the decision of the Office of Judges dated May 19, 2022, and REINSTATE the Claims Administrators order dated July 1, 2021. In the instant claim the decision of the Office of Judges is clearly wrong in light of the reliable, probative and substantial evidence of record, or lack thereof, is arbitrary and capricious and is in violation of the applicable statutes and regulations and should be REVERSED. Alternatively, the employer requests that this claim be REMANDED to the Board of Review to permit the employer an opportunity to develop evidence to rebut the presumption set forth in Moore v. ICG Tygart Valley, LLC, No. 20-0028 (April 28, 2022).



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Jeffrey B. Brannon, *WV Bar ID # 7838*

**CERTIFICATE OF SERVICE**

I, Jeffrey B. Brannon, Esq., attorney for the Petitioner, Blackhawk Mining, LLC, hereby certify that a true and exact copy of the foregoing “Brief on Behalf of Petitioner, Blackhawk Mining, LLC” was served upon the Respondent by forwarding a true and exact copy thereof in the United States mail, postage prepaid, this 21<sup>st</sup> day of November, 2022 addressed as follows:

Reginald Henry  
P.O. Box 465  
Mabscott, WV 25871-9998

  
\_\_\_\_\_  
Jeffrey B. Brannon, *WV Bar ID # 7838*