

FILED
August 1, 2024

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

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Marilyn McKinney,
Claimant Below, Petitioner

v.) No. 23-117 (JCN: 2017014532)
(ICA No. 22-ICA-78)

Little General Store, Inc.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Marilyn McKinney appeals the January 10, 2023, memorandum decision of the Intermediate Court of Appeals of West Virginia (“ICA”). *See McKinney v. Little General Store, Inc.*, No. 22-ICA-78, 2023 WL 152807 (W. Va. Ct. App. Jan. 10, 2023) (memorandum decision). Respondent Little General Store, Inc. filed a timely response.¹ The issue on appeal is whether the ICA erred in affirming the August 8, 2022, decision of the West Virginia Workers’ Compensation Board of Review, which affirmed the Office of Judges’ February 7, 2022, order² that included cervical and lumbar sprains as additional compensable diagnoses in the claim.³

¹ The petitioner is represented by counsel Reginald D. Henry and Lori J. Withrow, and the respondent is represented by counsel Charles R. Bailey, John P. Fuller, and Celeste E. Webb.

² The Board of Review decided the appeal of an order entered by the Office of Judges on February 7, 2022; this appeal was already pending at the Board of Review on June 30, 2022, when the West Virginia workers’ compensation system underwent a significant restructuring. Despite the restructuring, the Board of Review was responsible for deciding this and “all remaining appeals filed with the Board of Review, of Office of Judges’ decisions issued prior to June 30, 2022[.]” *See* W. Va. Code § 23-5-8b(e). The order entered by the Board of Review was then appealed to the ICA, which pursuant to West Virginia Code § 23-5-8b(d)(2), has exclusive jurisdiction over all final orders or decisions issued by the Board of Review after June 30, 2022. *See also* W. Va. Code § 23-5-15(a) (directing that prior statutory provisions allowing for appeals from Board of Review directly to Supreme Court of Appeals do not apply to any Board of Review decision issued after June 30, 2022.)

³ Neither party appeals the separate decision of the Board of Review, made in the same order, to return the issue of permanent partial disability to litigation, finding that the 2% award made by the Office of Judges was premature.

The claimant asserts that the Office of Judges, as affirmed by the Board of Review and the ICA, erred in not finding that her preexisting degenerative joint and disc diseases in the cervical and lumbar spines also constituted additional compensable conditions. The employer maintains that the claimant points to no erroneous procedure, no arbitrary or capricious conclusions, and no abuse of discretion or jurisdictional error by the tribunals below.

This Court reviews questions of law de novo, while we accord deference to the lower tribunal's findings of fact unless the findings are clearly wrong. *See* Syl. Pt. 3, *Duff v. Kanawha Cnty. Comm'n*, No. 23-43, 2024 WL 1715166 (W. Va. Apr. 22, 2024). Upon consideration of the record and briefs, we find no reversible error and therefore summarily affirm. *See* W. Va. R. App. P. 21(c).

Affirmed.

ISSUED: August 1, 2024

CONCURRED IN BY:

Chief Justice Tim Armstead
Justice Elizabeth D. Walker
Justice John A. Hutchison
Justice William R. Wooton
Justice C. Haley Bunn