

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**Charles Canaday,
Claimant Below, Petitioner**

v.) No. 23-171 (JCN: 2019026301)
(ICA No. 22-ICA-170)

**Jane Lee Enterprises,
Employer Below, Respondent**

**FILED
August 27, 2024**

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

MEMORANDUM DECISION

Petitioner Charles Canaday appeals the February 2, 2023, memorandum decision of the Intermediate Court of Appeals of West Virginia (“ICA”). *See Canaday v. Jane Lee Enterprises*, No. 22-ICA-170, 2023 WL 1464103 (W. Va. Ct. App. Feb. 2, 2023) (memorandum decision). Respondent Jane Lee Enterprises, Inc. filed a timely response.¹ The issue on appeal is whether the ICA erred in affirming the decision of the West Virginia Workers’ Compensation Board of Review, which affirmed the claim administrator’s August 26, 2021, order granting the petitioner an award of 20% permanent partial disability for occupational pneumoconiosis.

The petitioner asserts that the West Virginia Occupational Pneumoconiosis Board erred in finding that the majority of his pulmonary impairment was due to his smoking history instead of occupational pneumoconiosis. The employer maintains that the petitioner points to no erroneous procedure, no arbitrary or capricious conclusions, 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 Board of Review’s findings of fact unless the findings are clearly wrong. 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.

¹ The petitioner is represented by counsel Reginald D. Henry and Lori Withrow. The respondent is represented by counsel Mark J. Grigoraci.

ISSUED: August 27, 2024

CONCURRED IN BY:

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