

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

**Timothy Gibson,**  
**Claimant Below, Petitioner**

v.) **No. 23-178** (JCN: 2019026835)  
(ICA No. 22-ICA-280)

**Blackhawk Mining, LLC,**  
**Employer Below, Respondent**

**MEMORANDUM DECISION**

Petitioner Timothy Gibson appeals the February 15, 2023, memorandum decision of the Intermediate Court of Appeals of West Virginia (“ICA”). *See Gibson v. Blackhawk Mining, LLC*, No. 22-ICA-280, 2023 WL 2017822 (W. Va. Ct. App. Feb. 15, 2023) (memorandum decision). Respondent Blackhawk Mining, LLC filed a timely response.<sup>1</sup> The issue on appeal is whether the ICA erred in affirming the November 3, 2022, decision of the West Virginia Workers’ Compensation Board of Review, which affirmed the claim administrator’s decision denying the addition of a right rotator cuff tear as a compensable condition and denying authorization for physical therapy to treat that condition.

The claimant asserts that the rotator cuff tear should be added to the claim and that physical therapy should be authorized as treatment. 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 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.

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<sup>1</sup> The petitioner is represented by counsel Reginald D. Henry and Lori J. Withrow, and the respondent is represented by counsel Sean Harter.

**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