

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

**Marshall Vetter,**  
**Claimant Below, Petitioner**

v.)     **No. 23-179** (JCN: 2012027670)  
          (ICA No. 22-ICA-193)

**Pilgrim's Pride Corp. of West Virginia, Inc.,**  
**Employer Below, Respondent**

**MEMORANDUM DECISION**

Petitioner Marshall Vetter appeals the February 15, 2023, memorandum decision of the Intermediate Court of Appeals of West Virginia ("ICA"). *See Vetter v. Pilgrim's Pride Corp. of West Virginia, Inc.*, No. 22-ICA-193, 2023 WL 2017713 (W. Va. Ct. App. Feb. 15, 2023) (memorandum decision). Respondent Pilgrim's Pride Corp. of West Virginia, Inc. filed a timely response.<sup>1</sup> The issue on appeal is whether the ICA erred in affirming the September 27, 2022, decision of the West Virginia Workers' Compensation Board of Review, which affirmed the Worker's Compensation Office of Judges' April 29, 2022, order upholding the claim administrator's decision denying the claimant's application for a permanent total disability award because he did not meet the required 50% threshold for consideration of such an award.<sup>2</sup>

The claimant asserts that he satisfied the 50% impairment eligibility threshold set forth in West Virginia Code § 23-4-6(n)(1). The employer maintains that the claimant points to no

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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 H. Dill Battle, III.

<sup>2</sup> The Board of Review decided the appeal of an order entered by the Office of Judges on April 29, 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.)

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