

FILED
August 1, 2024

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

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

**ANR, Inc.,
Employer Below, Petitioner**

v.) No. 23-201 (JCN: 2018007880)
(ICA No. 22-ICA-238)

**Jerry Stover,
Claimant Below, Respondent**

MEMORANDUM DECISION

Petitioner ANR, Inc. appeals the February 15, 2023, memorandum decision of the Intermediate Court of Appeals of West Virginia (“ICA”). *See Jerry Stover v. ANR, Inc.*, No. 22-ICA-238, 2023 WL 2017768 (W. Va. Ct. App. Feb. 15, 2023) (memorandum decision). Respondent Jerry Stover filed a timely response.¹ The issue on appeal is whether the ICA erred in reversing the decision of the West Virginia Workers’ Compensation Board of Review, which concluded that Mr. Stover did not establish an aggravation or progression of his compensable lumbar strain injury.

On appeal, the employer asserts that the ICA erred in reversing the Board of Review’s decision because the Board of Review’s order was supported by the reliable and probative evidence that Mr. Stover’s lumbar strain injury reached maximum medical improvement, and that his chronic back pain, bilateral leg/foot symptoms, and corresponding impairment, were caused by preexisting degenerative changes. Mr. Stover counters by arguing that the ICA did not err in finding that he provided a prima facie cause that he suffered a progression or aggravation of his condition attributable to the compensable injury.

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 H. Dill Battle III, and the respondent is represented by counsel Reginald D. Henry and Lori J. Withrow.

ISSUED: August 1, 2024

CONCURRED IN BY:

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

DISSENTING:

Justice C. Haley Bunn

Bunn, Justice, dissenting:

I dissent to the majority's resolution of this case. I would have set this case for oral argument to thoroughly address the error alleged in this appeal. Having reviewed the parties' briefs and the issues raised therein, I believe a formal opinion of this Court was warranted, not a memorandum decision. Accordingly, I respectfully dissent.