

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

**Gary Whited,  
Claimant Below, Petitioner**

**v.)      No. 23-440      (JCN: 2019006554)  
   (ICA No. 22-ICA-300)**

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

**FILED  
August 27, 2024**

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

**MEMORANDUM DECISION**

Petitioner Gary Whited appeals the June 15, 2023, memorandum decision of the Intermediate Court of Appeals (“ICA”). *See Whited v. Blackhawk Mining, LLC*, No. 22-ICA-300, 2023 WL 4029122 (W. Va. Ct. App. Jun. 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 Board of Review’s order, which reversed the claim administrator’s decision to grant the petitioner no additional permanent partial disability above his previous award of 3% permanent partial disability. Instead, the Board of Review granted him an additional 2% permanent partial disability award for a total of 5% permanent partial disability.

On appeal, the petitioner argues that the ICA committed clear error in adopting the decision of the Board of Review, which ignored the weight of the credible, medical evidence in the record. The petitioner maintains that his treating physician Mae Hyre, M.D., along with Michael Kominsky, D.O., and Robert Walker, M.D., best accounted for all impairments resulting from the petitioner’s compensable conditions, and their opinions assigning an additional percentage rating should have been adopted by the ICA. The respondent counters by arguing that the ICA’s decision should be affirmed, as it is legally correct and supported by the reliable, probative, substantial, and preponderant evidence in the record.

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. April 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 Stephen P. New and Amanda J. Taylor, and the respondent is represented by counsel Sean Harter.

**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