

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Lloyd Johnson,
Claimant Below, Petitioner

v.) **No. 23-460** (JCN: 2005041660)
(ICA No. 22-ICA-18)

Kanawha Stone Company, Inc.;
Employer Below, Respondent; and
West Virginia Office of the Insurance
Commissioner, in its capacity as the
administrator of the Old Fund,
Respondent

MEMORANDUM DECISION

Petitioner Lloyd Johnson appeals the June 15, 2023, memorandum decision of the Intermediate Court of Appeals of West Virginia (“ICA”). *See Johnson v. Kanawha Stone Co., Inc.*, No. 23-ICA-18, 2023 WL 4027444 (W. Va. Ct. App. Jun. 15, 2023) (memorandum decision). Respondent West Virginia Office of the Insurance Commissioner (“WVOIC”), in its capacity as the administrator of the Old Fund, filed a timely response.¹ The issue on appeal is whether the ICA erred in affirming the December 19, 2022, decision of the West Virginia Workers’ Compensation Board of Review, which affirmed the claim administrator’s July 11, 2022, order denying the claimant’s request for an independent medical evaluation (“IME”).

The claimant asserts that he should be scheduled for an IME to generally determine his medical and disability statuses. WVOIC counters by arguing that the claimant is not yet due for an IME because he is not at maximum medical improvement. WVOIC further 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*, --- W. Va. ---, 905 S.E.2d 528 (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).

¹ The claimant is represented by counsel M. Jane Glauser, and WVOIC is represented by counsel Steven K. Wellman and James W. Heslep.

Affirmed.

ISSUED: October 30, 2024

CONCURRED IN BY:

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