

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Virginia Smith,
dependent of Walter F. Smith (deceased),
Claimant Below, Petitioner

v.) **No. 23-617** (JCN: 2020008001)
(ICA No. 23-ICA-156)

Pine Ridge Coal Company, LLC,
Employer Below, Respondent; and
West Virginia Office of the Insurance
Commissioner, in its capacity as
administrator of the Self-Insured
Employer Security Risk Pool,
Respondent

MEMORANDUM DECISION

Petitioner Virginia Smith (“claimant”), dependent of Walter F. Smith (deceased), appeals the September 5, 2023, memorandum decision of the Intermediate Court of Appeals of West Virginia (“ICA”). *See Smith v. Pine Ridge Coal Co., LLC*, No. 23-ICA-156, 2023 WL 5695910 (W. Va. Ct. App. Sept. 5, 2023) (memorandum decision). Respondent West Virginia Office of the Insurance Commissioner (“WVOIC”), in its capacity as administrator of the Self-Insured Employer Security Risk Pool, filed a timely response.¹ The issue on appeal is whether the ICA erred in affirming the March 21, 2023, decision of the West Virginia Workers’ Compensation Board of Review, which affirmed the claim administrator’s October 18, 2021, order denying the claim for death benefits.

The claimant asserts that the Occupational Pneumoconiosis Board was clearly wrong in finding that end-stage renal disease primarily caused the decedent’s death when the decedent had a substantial history of working as an underground coal miner and, during his lifetime, received an award of 50% permanent partial disability due to occupational pneumoconiosis. WVOIC counters by arguing that the Occupational Pneumoconiosis Board properly found that occupational pneumoconiosis did not constitute a material contributing factor in the decedent’s death. WVOIC

¹ The claimant is represented by counsel Reginald D. Henry and Lori J. Withrow, and WVOIC is represented by counsel James W. Heslep.

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).

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