

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Murray American Energy, Inc.,¹
Employer below, Petitioner

v.) **No. 23-622** (JCN: 2020010683)
(ICA No. 23-ICA-205)

Richard Yost Jr.,
Claimant Below, Respondent

MEMORANDUM DECISION

Petitioner Murray American Energy, Inc. appeals the September 26, 2023, memorandum decision of the Intermediate Court of Appeals of West Virginia (“ICA”). *See Murray American Energy, Inc. v. Yost*, No. 22-ICA-205, 2023 WL 6290517 (W. Va. Ct. App. Sept. 26, 2023) (memorandum decision). Respondent Richard Yost Jr. filed a timely response.² The issue on appeal is whether the ICA erred in affirming the Board of Review’s reversal of the claim administrator’s order dated December 28, 2022, which denied a reopening of the claim for temporary total disability benefits. The Board of Review granted temporary total disability benefits from February 11, 2021, through December 11, 2022, not to exceed 104 weeks.

The petitioner argues that the ICA erred in affirming the Board of Review’s reversal of the claim administrator’s order and granting the claimant’s requested temporary total disability benefits. Though the claimant’s secondary conditions of post-concussive syndrome and post-traumatic headaches were added to the claim as compensable conditions after the claim was closed for temporary total disability benefits, the petitioner contends that their addition does not constitute “facts not previously considered” sufficient to warrant the reopening of the claim for temporary total disability benefits. The respondent counters by arguing that that the ICA determined that the Board of Review correctly noted that the additional compensable conditions constituted facts not previously considered, and that by their inclusion as compensable conditions, demonstrated that

¹ For reasons not readily apparent in the record on appeal, the parties have substituted “Harrison County Coal Resources, Inc.” for the employer that was identified below, “Murray American Energy, Inc.” However, we use the name of the employer as designated in the order on appeal.

² The petitioner is represented by counsel Aimee M. Stern, and the respondent is represented by counsel J. Thomas Greene Jr. and T. Colin Green.

the respondent, in fact, remained temporarily and totally disabled throughout the requested period of disability.

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*, 250 W. Va. 510, 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: November 26, 2024

CONCURRED IN BY:

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