

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

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

Daniel Skipper II,
Claimant Below, Petitioner

v.) **No. 24-7** (JCN: 2020018930)
 (ICA No. 23-ICA-280)

Mountain State Beverage,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Daniel Skipper II appeals the November 1, 2023, memorandum decision of the Intermediate Court of Appeals of West Virginia (“ICA”). *See Skipper v. Mountain State Beverage*, No. 23-ICA-280, 2023 WL 7203518 (W. Va. Nov. 1, 2023) (memorandum decision). Respondent Mountain State Beverage filed a response.¹ The issue on appeal is whether the ICA erred in affirming the June 2, 2023, decision of the West Virginia Workers’ Compensation Board of Review, which affirmed three separate orders entered by the claim administrator during June and July 2022, which (1) denied the addition of low back pain, lumbar radiculopathy, lumbar spondylosis, and displacement of intervertebral disc as compensable conditions; (2) denied a reopening for TTD benefits; and (3) denied referrals to pain management, a neurosurgeon, and a neurologist, and testing and treatment for the complaints of low back pain, lumbar radiculopathy, and left lower extremity weakness.

The claimant asserts that his treating physician found that a February 2022 MRI showed conditions that were not present on an MRI performed in November 2017 before the February 2022 compensable injury occurred. The employer counters by arguing that the claimant underwent the November 2017 MRI due to lumbar pain and radiculopathy. Next, the employer argues that the claimant reported to his medical providers in February 2022 that his pain from the compensable injury resolved after one week and that he felt completely healed before reporting a recurrence of back pain three months later. Finally, the employer argues that to the extent the claimant claims low back pain as an additional compensable diagnosis, pain is a symptom instead of a diagnosis that can be added to a claim.

¹ The claimant is represented by counsel J. Thomas Greene Jr. and T. Colin Greene, and the employer is represented by counsel Jeffrey M. Carder.

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*, 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: January 14, 2025

CONCURRED IN BY:

Chief Justice William R. Wooton
Justice Elizabeth D. Walker
Justice Tim Armstead
Justice C. Haley Bunn
Justice Charles S. Trump IV