



Affirmed.

**ISSUED: February 20, 2025**

**CONCURRED IN BY:**

Justice Elizabeth D. Walker  
Justice Tim Armstead  
Justice C. Haley Bunn  
Justice Charles S. Trump IV

**DISSENTING:**

Chief Justice William R. Wooton

WOOTON, Chief Justice, dissenting:

I respectfully dissent, as I believe this case should have been placed on the Court’s Rule 19 docket for oral argument and an in-depth review of the medical evidence.

Petitioner Melisa Thompson (“the petitioner”) was exposed to COVID-19 during the course of her employment and contracted the disease. She was hospitalized for ten days with fever, cough, and bilateral pneumonia, and contends that as a result of her work-related injury she has developed PTSD, anxiety and depressive disorder, pulmonary impairment, cough, abnormal vision, fatigue, spasm, and diarrhea.

The medical records do not indicate that the petitioner had any symptomatic pulmonary impairment prior to her work-related exposure to COVID-19. Further, none of the physicians upon whose opinions the Board of Review relied, and in particular Dr. Zaldivar who opined that all of the petitioner’s post-COVID-19 pulmonary issues were somehow attributable to her preexisting obesity, pointed to facts which would “prove the degree of impairment attributable to the claimant’s preexisting condition(s).” Syl. Pt. 6, *Duff v. Kanawha Cnty. Comm’n*, 250 W. Va. 510, 905 S.E.2d 528 (2024).

The opinions of the Board of Review and the Intermediate Court strongly suggest the existence of “fat bias” on the part of the physicians who evaluated the petitioner’s claims. Accordingly, I respectfully dissent from the majority’s summary affirmance.