

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Blackhawk Mining, Inc.,
Employer Below, Petitioner

v.) **No. 24-296** (JCN: 2022013074)
(ICA No. 24-ICA-7)

Eddie Norman,
Claimant Below, Respondent

MEMORANDUM DECISION

Petitioner Blackhawk Mining, Inc. appeals the March 25, 2024, memorandum decision of the Intermediate Court of Appeals (“ICA”). See *Blackhawk Mining, Inc. v. Norman*, No. 24-ICA-7, 2024 WL 1256380 (W. Va. Ct. App. Mar. 25, 2024) (memorandum decision). Respondent Eddie Norman filed a timely response.¹ The issue on appeal is whether the ICA erred in affirming the December 7, 2023, order of the Board of Review, which reversed the claim administrator’s July 18, 2022, order granting Mr. Norman an 8% permanent partial disability (“PPD”) award. In reversing the claim administrator’s decision, the Board of Review granted Mr. Norman an additional 12% PPD award, for a total of 20% PPD.

On appeal, the petitioner argues that the respondent failed to meet his burden of proving by a preponderance of the evidence that he was entitled to more than the 8% PPD awarded by the claim administrator. At a maximum, the respondent was only entitled to have his initial impairment rating increased to a 10% to 13% whole person disability found in Lumbar Category III of Table 85-20-C. Alternatively, the petitioner asserts that the matter should be remanded to the Board of Review to allow the parties to submit additional proof on the extent of the respondent’s compression fracture and the corresponding impairment rating. The respondent counters by arguing that the Board of Review and ICA were not clearly wrong in concluding that the opinion of Bruce Guberman, M.D., classifying the respondent as Lumbar Category IV of Table 85-20-C was more credible than the assessment of Prasadarao B. Mukkamala, M.D., who placed the respondent into Category II of Table 85-20-C. In a reply brief, the petitioner once again contends that the respondent failed to meet his burden of proof by establishing by a preponderance of the evidence that he was entitled to more than the 8% PPD award granted by the claim administrator.

¹ The petitioner is represented by counsel Billy R. Shelton, and the respondent is represented by counsel Robert F. Vaughan.

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: February 11, 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