

THE WEST VIRGINIA SUPREME COURT OF APPEALS  
CHARLESTON, WEST VIRGINIA

John Delsignore, Claimant,

Petitioner,

v.

JCN No.: 2021013896  
Intermediate No: 22-ICA-331  
Supreme Ct. No: 23-636

Timberline Logging Enterprises, LLC, Employer,

Respondent.

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BRIEF ON BEHALF OF RESPONDENT  
Timberline Logging Enterprises, LLC

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## **I. NATURE OF THE PROCEEDING**

This proceeding arises from the Claimant's appeal from the West Virginia Intermediate Court of Appeals' Memorandum Decision dated September 5, 2023, which affirmed the Board of Review Order dated December 2, 2022, upholding the claims administrator's order dated June 3, 2022, which denied the request to add right ankle subtalar joint arthritis, left hip joint pain, and low back pain with sciatica as secondary conditions to the claim.

The claimant herein is a timber cutter for Timberline Logging. The claimant sustained injury on January 7, 2021, when he was knocked over by a tree branch at work. X-rays were taken revealing a trimalleolar fracture at the right ankle. By claims administrator dated February 4, 2021, the claim was accepted for displaced trimalleolar fracture of right leg and contusion of lower back and pelvis.

The claimant submitted a diagnosis update by Dr. Alvarez requesting to add right ankle subtalar joint arthritis, left hip joint pain, and low back pain with left sided sciatica as secondary conditions to the claim. By claims administrator's order dated June 3, 2022, the diagnosis update was denied, and the claimant protested the June 3, 2022 order.

The claims administrator was correct in denying the secondary diagnosis for right ankle subtalar joint arthritis on the basis that no right ankle arthritis was seen on any x-ray or diagnostic study. The denial is further supported by a report by Dr. Christopher Martin at WVU Occupational Medicine, in which he concluded there is no evidence to support the claimant currently has posttraumatic joint arthritis. Whereas the claimant is at increased risk of developing posttraumatic arthritis in the years ahead given the nature and severity of his fracture, development of post traumatic arthritis would not be expected to develop so close to the time of the injury when Dr. Alvarez issued the diagnostic update requesting to add posttraumatic arthritis as a compensable diagnosis to the

claim. The Workers' Compensation Board of Review concluded evidence did not support a diagnosis of right ankle post-traumatic arthritis and affirmed the claims administrator's order which denied the addition of right ankle post-traumatic arthritis as a compensable condition under the claim.

As for the requests to add left hip joint pain and low back pain with left sided sciatica as secondary conditions, this Court has consistently held that pain is a symptom and not a diagnosis for which a claim can be held compensable. See *Harpold v. City of Charleston*, No. 18-0730 (W. Va. Apr. 25, 2019) (memorandum decision) (holding that left knee pain is a symptom, not a diagnosis and therefore cannot be added to a claim), *Radford v. Panther Creek Mining, LLC*, No. 18-0806, 2019 (W. Va. Sep. 13, 2019) (memorandum decision) (holding that neck and shoulder pain cannot be added to a claim as they are symptoms, not diagnoses). Here, the claimant has requested to add pain and sciatica as compensable conditions to the claim, yet pain and sciatica are symptoms and not diagnoses for which a claim can be held compensable. Accordingly, the Board of Review also affirmed denied the addition of right ankle subtalar joint arthritis, left hip joint pain and low back pain with left sided sciatica as secondary conditions to the claim.

The West Virginia Intermediate Court of Appeals found no error in the Board of Review's Order denying the addition of right ankle subtalar joint arthritis, left hip joint pain, and low back pain with left-sided sciatica to the claim and by decision entered September 5, 2023 affirmed the December 2, 2022 Board of Review Order.

## **II. STATEMENT OF THE CASE**

The claimant herein, John Delsignore, is presently 50 years-old and was employed on the date of injury as a timber faller by Timberline Logging. [**App. 1**]. The claimant completed a West Virginia Workers' Compensation Employees' and Physicians' Report of Occupational Injury or Disease (WC-

1) form on January 10, 2021, alleging he sustained injury to his “right ankle, left elbow, left hip, lower back, ribs lower” on January 7, 2021, when he was “cutting tree with power saw, struck by limb from same tree, thrown back at myself.” [App. 1]. Section II of the form, the Physician’s Section, was completed by medical personnel at Garrett Regional Medical in Oakland, MN on January 25, 2021. [App. 1]. The medical personnel indicated that the claimant’s date of initial treatment was the date of injury. [App. 1]. The nature, body part, and type of injury was listed as twisting lower body, right leg, lower back, and pelvis. [App. 1]. The medical provider indicated that the claimant’s disability period would be more than 4 weeks. [App. 1].

The claimant was taken to Garrett County Regional Memorial Hospital on January 7, 2021, where he came under the care of orthopedic surgeon Dr. Dona Alvarez. [App. 2]. The claimant reported he was cutting down a tree when the top of it came down hitting him and knocking him over. [App. 2]. He denied loss of consciousness but had an obvious deformity of his right ankle and foot. [App. 2]. His admitting diagnosis was recorded as: fracture-dislocation of the right ankle secondary to a logging injury in the woods. [App. 2].

X-rays were taken of the right ankle revealing a trimalleolar fracture with severe displacement and dislocation. [App. 2]. The talus was laterally and posteriorly dislocated. Alignment was significantly improved in post-reduction x-rays. [App. 2]. X-rays of the left elbow were also performed and were unremarkable. [App. 2]. A portable chest revealed no abnormalities. X-ray of the lumbar spine showed no fracture or subluxation, only degenerative changes, most pronounced at L5-S1. [App. 2].

Claimant was taken to the operating room on January 7, 2021, where open reduction and internal fixation of the right ankle joint with a Synthes locking plate and screws and placement of a

well-padded short leg fiberglass cast was performed. [App. 2]. Claimant then attended post-operative physical therapy beginning February 18, 2021.

By claims administrator dated February 4, 2021, the claim was accepted for displaced trimalleolar fracture of right leg (S82.851A) and contusion of lower back and pelvis (S30.0XXA). [App. 3].

Dr. Alvarez then completed a diagnosis update on April 27, 2022, requesting to add the following secondary conditions: right ankle subtalar joint arthritis (M19.079), left hip joint pain (M25.552), and low back pain with left sided sciatica (M54.32). [App. 4].

The claimant attended a medical evaluation with Dr. Christopher Martin on July 20, 2021. [App. 5]. Upon reviewing the records and performing a physical examination of the claimant, Dr. Martin concluded the claimant sustained some contusions to the posterior torso and a trimalleolar fracture of the right ankle with displacement and dislocation. [App. 5]. In reviewing Dr. Alvarez's request to add right ankle subtalar joint arthritis as a compensable component to the claim, Dr. Martin indicated he found no evidence to support the claimant currently had posttraumatic joint arthritis. [App. 5]. Whereas the claimant given the nature and severity of his fracture is at an increased risk of developing posttraumatic arthritis in the years ahead, development of posttraumatic arthritis would not be expected to develop at this point so close to the time of the injury. [App. 5]. Dr. Martin further indicated that there is no finding of posttraumatic arthritis demonstrated on any x-ray. [App. 5].

Dr. Christopher Martin evaluated the claimant again on December 1, 2021. [App. 6]. Inspection of the right ankle joint revealed normal alignment with bony hypertrophy of both malleoli, but no swelling in the right ankle joint. [App. 6]. Reflexes were brisk and symmetric in both lower extremities. [App. 6]. The claimant reported numbness to light touch at the tips of all toes of the right

foot, otherwise normal, symmetric sensation throughout both or extremities. [App. 6]. He stated that this numbness was improving. [App. 6].

Dr. Martin indicated that the right ankle joint was stable and nontender to palpation. [App. 6]. Range of motion measurements were made using a goniometer according to the techniques of the *AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition*. [App. 6]. Dorsal flexion was measured as left 20, right 10 degrees; plantar flexion left 50 degrees causing a painful muscle spasm in the left calf, right 30 degrees; inversion left 40 degrees, right 0 degrees; and eversion left 30 degrees, right 20 degrees. [App. 6]. Peripheral pulses were present in the right foot and capillary refill was normal. [App. 6]. There was no atrophy appreciated in the lower extremities. [App. 6].

Dr. Martin reiterated his opinion from his previous report that he is unable to implicate any spinal injury or pelvis injury as related to the episode of January 7, 2021. [App. 6]. He noted that x-rays of the spine were taken on the date of injury and showed no evidence of trauma, degenerative findings only. [App. 6]. There is no medical basis to repeat this study on the basis of any traumatic condition from that injury. [App. 6]. He does not believe however the claimant is capable of returning to his pre-injury job full duty. [App. 6].

Dr. Martin agrees with the restrictions provided by Dr. Jackson on November 22, 2021, which indicate the claimant is not able to walk on inclines, not able to climb ladders or trees, and not able to carry loads greater than 25 pounds. [App. 6]. Dr. Martin concluded the claimant has reached maximum medical improvement (“MMI”) from the January 7, 2021 injury and provided a permanent impairment rating under the applicable *AMA Guides, Fourth Edition*. [App. 6]. The claimant has 5% whole person impairment for mild category with a 3% impairment of the whole person by Table 43 and moderate to severe category for the hindfoot with a 2% impairment of the whole person. [App.



6]. This combines for a 5% whole person impairment, which is the impairment recommended for the compensable injury to the right ankle. [App. 6].

By claims administrator's order dated June 3, 2022, the diagnosis update requesting to add right ankle subtalar joint arthritis, left hip joint pain, and low back pain with left sided sciatica as secondary diagnoses was denied. [App. 7]. The claimant protested this order, and claimant's protest was taken before the Board of Review for decision.

By Order dated December 2, 2022, the Board of Review affirmed the June 3, 2022 claims administrator's order denying the addition of right ankle subtalar joint arthritis, left hip joint pain and low back pain with left sided sciatica as secondary conditions to the claim. [App. 8].

With respect to the request to add right ankle subtalar joint arthritis, the Board indicated Dr. Alvarez rendered a clinical diagnosis for right ankle subtalar joint arthritis on June 16, 2021, and opined that such was causally related to the compensable injury. [App. 8]. However, in reviewing the claimant's right ankle x-ray, the x-ray did not document a finding of arthritis. [App. 8]. The Board further considered Dr. Martin's report in which Dr. Martin opined the development of post-traumatic arthritis would not be expected to occur so close to the date of the compensable injury. [App. 8]. Accordingly, the Board concluded evidence did not support a diagnosis of right ankle post-traumatic arthritis and therefore was correct in affirming the claims administrator's order that denied the addition of right ankle post-traumatic arthritis as a compensable condition under the claim. [App. 8].

Regarding the requested diagnoses of left hip joint pain and low back pain with left-sided sciatica, the Board acknowledged the West Virginia Supreme Court of Appeals has repeatedly held that pain is a symptom and not a diagnosis that can be added to a claim. See *Harpold V. City of Charleston*, No. 18-0730 (W.Va. Supreme Court, April 25, 2019); and *Whitt v. US Trinity*

*Energy Services, LLC*, No. 20-0732 (W.Va. Supreme Court, February 25, 2022). Because the requested diagnoses were for pain, which is a symptom and not a condition under the law, the Board of Review affirmed the claims administrator's order that denied the addition of the requested conditions. [App. 8].

On appeal, the West Virginia Intermediate Court of Appeals found no error in the Board of Review's Order denying the additional of right ankle subtalar joint arthritis, left hip joint pain, and low back pain with left-sided sciatica to the claim. [App. 9]. The Intermediate Court agreed with the Board of Review in that no x-rays performed have been interpreted as showing arthritis in the claimant's right ankle. [App. 9]. Further, while Dr. Martin noted the claimant may be at an increased risk for developing the condition in the future, he opined that post-traumatic/right subtalar joint arthritis would develop so soon after the compensable injury. [App. 9].

The claimant argued that it was "illogical" for Dr. Martin to agree with Dr. Alvarez's recommendation for a brace but then disagree with her diagnosis. [App. 9]. However, the Intermediate Court did not find this argument persuasive. [App. 9]. It is perfectly reasonable for Dr. Martin to agree that a brace was necessary for the compensable trimalleolar fracture rather than arthritis. [App. 9]. Therefore, the Intermediate Court found no error in the Board of Review's decision to deny the addition of right ankle subtalar joint arthritis to the claim. [App. 9].

The Intermediate Court also concluded the Board of Review was not clearly wrong in determining left hip joint pain and low back pain were not appropriate compensable conditions in the claim. [App. 9]. The Intermediate Court noted this Court has repeatedly held pain is a symptom, not a diagnosis, and therefore cannot be added as a compensable diagnosis to the claim. [App. 9]. For these reasons, the Intermediate Court unanimously affirmed the Board of Review's December 2, 2022 Order. [App. 9].

### **III. SUMMARY OF ARGUMENT**

The claimant sustained a work injury to his low back and pelvis as well as a displaced fracture to the right ankle, for which the claim was accepted by claims administrator's order dated February 4, 2021. The claimant then requested to add right ankle subtalar joint arthritis, left hip joint pain and low back pain with left sided sciatica as secondary conditions through submission of a diagnosis update completed by Dr. Alvarez on April 27, 2022. The claims administrator was correct in denying the secondary diagnosis for right ankle subtalar joint arthritis on the basis that no right ankle arthritis was seen on any x-ray or diagnostic study. The denial is further supported by Dr. Christopher Martin, who indicated in his July 20, 2021 report that there is no evidence to support the claimant currently has posttraumatic joint arthritis. Whereas the claimant is at increased risk of developing posttraumatic arthritis in the years ahead given the nature and severity of his fracture, development of post traumatic arthritis would not be expected to develop so close to the time of the injury when Dr. Alvarez issued the diagnostic update requesting to add posttraumatic arthritis to the claim. Accordingly, the Intermediate Court of Appeals was not wrong in affirming the Board of Review's Order in that it denied the addition of right ankle post-traumatic arthritis as a compensable condition under the claim as evidence did not support a diagnosis of right ankle post-traumatic arthritis.

The Intermediate Court also did not err in affirming the Board of Review's on the basis that left hip joint pain and low back pain are not appropriate compensable conditions in the claim. The Intermediate Court noted the West Virginia Supreme Court of Appeals has consistently held that pain is a symptom and not a diagnosis. See *Harpold v. City of Charleston*, No. 18-0730 (W. Va. Apr. 25, 2019) (memorandum decision) (holding that left knee pain is a symptom, not a diagnosis and therefore cannot be added to a claim), *Radford v. Panther Creek Mining, LLC*, No. 18-0806,

2019 (W. Va. Sep. 13, 2019) (memorandum decision) (holding that neck and shoulder pain cannot be added to a claim as they are symptoms, not diagnoses). Accordingly, the Intermediate Court was also not wrong in affirming the Board of Review's Order which denied the addition of left hip joint pain and low back pain with sciatica to the claim.

#### **IV. STATEMENT REGARDING ORAL ARGUMENT AND DECISION**

Respondents do not request oral argument as oral argument would be unnecessary and inappropriate under the standard set forth by Rule 19 of the *West Virginia Rules of Appellate Procedure*. Respondents instead request entry of a memorandum decision on the merits as presented in the parties' individual briefs.

#### **V. ARGUMENT**

##### **A. STANDARD OF REVIEW**

West Virginia Code § 23-5-15 sets forth the applicable standard of review regarding workers' compensation appeals, which provides that "[i]n reviewing a decision by the Board of Review, the Supreme Court of Appeals shall consider the record provided by the board and give deference to the board's findings, reasoning, and conclusions, in accordance with subsection (d) and (e) of this section", as follows:

(d) If the decision of the board represents an affirmation of a prior ruling by both the commission and the Office of Judges that was entered on the same issue in the same claim, the decision of the board may be reversed or modified by the Supreme Court of Appeals only if the decision is in clear violation of constitutional or statutory provision, is clearly the result of erroneous conclusions of law, or is based upon the board's material misstatement or mischaracterization of particular components of the evidentiary record. The court may not conduct a de novo re-weighing of the evidentiary record. If the court reverses or modifies a decision of the board pursuant to this subsection, it shall state with specificity the basis for the reversal or modification and the manner in which the decision of the board clearly violated constitutional or statutory provisions, resulted from erroneous conclusions of law, or was based upon the board's

material misstatement or mischaracterization of particular components of the evidentiary record.

(e) If the decision of the board effectively represents a reversal of a prior ruling of either the commission or the Office of Judges that was entered on the same issue in the same claim, the decision of the board may be reversed or modified by the Supreme Court of Appeals only if the decision is in clear violation of constitutional or statutory provisions, is clearly the result of erroneous conclusions of law, or is so clearly wrong based upon the evidentiary record that even when all inferences are resolved in favor of the board's findings, reasoning and conclusions, there is insufficient support to sustain the decision. The court may not conduct a *de novo* re-weighing of the evidentiary record. If the court reverses or modifies a decision of the board pursuant to this subsection, it shall state with specificity the basis for the reversal or modification and the manner in which the decision of the board clearly violated constitutional or statutory provisions, resulted from erroneous conclusions of law, or was so clearly wrong based upon the evidentiary record that even when all inferences are resolved in favor of the board's findings, reasoning and conclusions, there is insufficient support to sustain the decision.

The Supreme Court of Appeals shall reverse a final order only if the decision is: (1) in violation of statutory provisions; (2) in excess of the statutory authority or jurisdiction of the Administrative Law Judge; (3) made upon unlawful procedures; (4) affected by other error of law; (5) clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. W. Va. Code § 23-5-12(b). As previously recognized in *Justice v. West Virginia Office Insurance Commission*, 230 W. Va. 80, 83, 736 S.E.2d 80, 83 (2012), the Supreme Court of Appeals applies a *de novo* standard of review to questions of law arising in the context of decisions issued by the Board of Review. See also *Davies v. W. Va. Off. of Ins. Comm'r*, 227 W. Va. 330, 334, 708 S.E.2d 524, 528 (2011).

Here, the Intermediate Court of Appeals was not clearly wrong in affirming the Board of Review Order dated December 2, 2022, which denied the request to add right ankle subtalar joint

arthritis, left hip joint pain, and low back pain with sciatica as secondary conditions to the claim. Accordingly, the Intermediate Court's decision should not be disturbed on appeal.

## **B. APPLICABLE LAW**

Initially, it must be remembered that the claimant bears the burden of establishing her claim. "In order to establish compensability an employee who suffers a disability in the course of his employment must show by competent evidence that there was a causal connection between such disability and his employment." *Deverick v. State Workmen's Compensation Director*, 150 W. Va. 145, 144 S.E. 2d 498 (1965) (Syl. pt 3). Not even under the old "rule of liberality" was the claimant relieved of this burden. In fact, the West Virginia Supreme Court of Appeals previously stated that "[w]hile informality in the presentation of evidence is permitted in workmen's compensation cases and a rule of liberality in favor of the claimant will be observed in appraising the evidence presented, still the burden of establishing a workmen's compensation claim rests upon the one that asserts it and the well-established rule of liberality cannot be considered to take the place of proper and satisfactory proof." *Deverick* at Syl. pt 1 (quoting Point 2, Syllabus, *Hayes v. State Compensation Director, et al.*, 149 W. Va. 220).

The Workers' Compensation Fund was created and exists only for the payment of compensation for work-related injuries and is not a health and accident fund. *Barnett v. State Workmen's Compensation Comm'r*, 153 W. Va. 796, 799, 172 S.E.2d 698, 700 (1970). Further, "...it is...axiomatic that the employer, by subscribing to the workmen's compensation fund, does not thereby become the employee's insurer against all ills or injuries which may befall him." *Jordan v. State Workmen's Compensation Comm'r*, 156 W. Va. 159, 165, 191 S.E.2d 497, 501 (1972) (citing *Barnett v. State Workmen's Compensation Comm'r*, 153 W. Va. 796, 172 S.E.2d 698 (1970) and *James v. Rinehard & Dennis Co., Inc.*, 113 W. Va. 414, 168 S.E. 482 (1933)).

Three elements must coexist in compensability cases: (1) a personal injury, (2) received in the course of employment, and (3) resulting from that employment. *Barnett v. State Workmen's Compensation Commissioner*, 153 W. Va. 796, 172 S.E. 2d 698 (1970); *Jordan v. State Workmen's Compensation Commissioner*, 156 W. Va. 159, 191 S.E. 2d 497 (1972).

Furthermore, the West Virginia Supreme Court has repeatedly held that pain is a symptom and not a diagnosis for which a claim can be held compensable. See *Harpold v. City of Charleston*, No. 18-0730 (W. Va. Apr. 25, 2019) (memorandum decision) (holding that left knee pain is a symptom, not a diagnosis and therefore cannot be added to a claim); *Radford v. Panther Creek Mining, LLC*, No. 18-0806, 2019 (W. Va. Sep. 13, 2019) (memorandum decision) (holding that neck and shoulder pain cannot be added to a claim as they are symptoms, not diagnoses).

### **C. ARGUMENT**

The Intermediate Court of Appeals did not err in affirming the Board of Review Order upholding the claim administrator's order, which denied the request to add right ankle subtalar joint arthritis, left hip joint pain, and low back pain with sciatica as secondary conditions to the claim. The claimant sustained a work injury to his low back and pelvis as well as a displaced fracture to the right ankle, for which the claim was accepted by claims administrator's order dated February 4, 2021. The claimant then requested to add right ankle subtalar joint arthritis, left hip joint pain and low back pain with left sided sciatica as secondary conditions through submission of a diagnosis update completed by Dr. Alvarez on April 27, 2022. The claims administrator was correct in denying the secondary diagnosis for right ankle subtalar joint arthritis on the basis that no right ankle arthritis was seen on any x-ray or diagnostic study. The denial is further supported by Dr. Christopher Martin, who indicated in his July 20, 2021 report that there is no evidence to support the claimant currently has posttraumatic joint arthritis. Whereas the claimant is at increased

risk of developing posttraumatic arthritis in the years ahead given the nature and severity of his fracture, development of post traumatic arthritis would not be expected to develop so close to the time of the injury when Dr. Alvarez issued the diagnostic update requesting to add posttraumatic arthritis to the claim.

The claimant argues on appeal that it was “illogical” for Dr. Martin to agree with Dr. Alvarez’s recommendation for a brace but then disagree with her diagnosis for posttraumatic arthritis. However, claimant’s argument fails in that it is perfectly reasonable for Dr. Martin to agree that a brace is necessary for the compensable trimalleolar fracture without compulsorily agreeing to a diagnosis for posttraumatic arthritis. Therefore, the Intermediate Court of Appeals was not wrong in affirming the Board of Review’s Order in that it denied the addition of right ankle post-traumatic arthritis as a compensable condition under the claim as the evidence of record does not support a diagnosis of right ankle post-traumatic arthritis.

The Intermediate Court also did not err in affirming the Board of Review’s on the basis that left hip joint pain and low back pain are not appropriate compensable conditions in the claim. The Intermediate Court noted the West Virginia Supreme Court of Appeals has consistently held that pain is a symptom and not a diagnosis. See *Harpold v. City of Charleston*, No. 18-0730 (W. Va. Apr. 25, 2019) (memorandum decision) (holding that left knee pain is a symptom, not a diagnosis and therefore cannot be added to a claim), *Radford v. Panther Creek Mining, LLC*, No. 18-0806, 2019 (W. Va. Sep. 13, 2019) (memorandum decision) (holding that neck and shoulder pain cannot be added to a claim as they are symptoms, not diagnoses). Accordingly, the Intermediate Court was also not wrong in affirming the Board of Review’s Order which denied the addition of left hip joint pain and low back pain with sciatica to the claim.



## **VI. CONCLUSION**

Based upon the foregoing, the employer submits that the Intermediate Court of Appeals was not clearly wrong in affirming the Board of Review's Order which upheld the claim administrator's order that denied claimant's request to add right ankle subtalar joint arthritis, left hip joint pain, and low back pain with sciatica as secondary conditions to the claim. Accordingly, the employer respectfully requests this Honorable Court for entry of an order AFFIRMING the Intermediate Court of Appeals decision dated September 5, 2023.

Respectfully submitted,  
Timberline Logging Enterprises, LLC  
By Counsel

  
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Jeffrey M. Carder *WV Bar ID # 12725*

THE WEST VIRGINIA SUPREME COURT OF APPEALS  
CHARLESTON, WEST VIRGINIA

John Delsignore, Claimant,

Petitioner,

v.

JCN No.: 2021013896

Intermediate No: 22-ICA-331

Supreme Ct. No: 23-636

Timberline Logging Enterprises, LLC, Employer,

Respondent.

**CERTIFICATE OF SERVICE**

I, Jeffrey M. Carder, attorney for the Respondent, Timberline Logging Enterprises, LLC, hereby certify that a true and exact copy of the foregoing “Brief on Behalf of Respondent, Timberline Logging Enterprises, LLC” was served upon the Petitioner by forwarding a true and exact copy thereof in the United States mail, postage prepaid, this 1<sup>st</sup> day of December 2023 addressed as follows:

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