

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Brian Collins,
Claimant Below, Petitioner

v.) **No. 24-277** (JCN: 2016005441)
(ICA No. 23-ICA-519)

Alpha Natural Resources, Inc.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Brian Collins appeals the March 25, 2024, memorandum decision of the Intermediate Court of Appeals of West Virginia (“ICA”). *See Collins v. Alpha Natural Resources, Inc.*, No. 23-ICA-519, 2024 WL 1270605 (W. Va. Ct. App. Mar. 25, 2024) (memorandum decision). Respondent Alpha Natural Resources, Inc. filed a response.¹ The issue on appeal is whether the ICA erred in affirming the October 5, 2023, decision of the West Virginia Workers’ Compensation Board of Review, which affirmed the claim administrator’s denial of a reopening for temporary total disability benefits (“TTD benefits”), denial of authorization for an AFO brace, and denial of authorization for an orthopedic referral.² In affirming the Board of Review, the ICA deferred to the Board’s finding that the claimant’s testimony was less credible than the other evidence of record regarding whether the claimant suffered a new injury in August 2022. *Id.* at *3 n.6.

The claimant argues that he has had instability in his left ankle since the compensable injury occurred in 2015. The claimant states that he continues to suffer pain and swelling, and he has been taken off work again due to the compensable injury.³ Therefore, the claimant argues that the claim should be reopened for TTD benefits and authorization should be granted for an AFO brace and an orthopedic referral. The employer counters by arguing that the evidence shows that there was no aggravation or progression of the compensable injury, and the AFO brace and the orthopedic referral were requested for non-compensable conditions. Therefore, the employer

¹ The claimant is represented by counsel Reginald D. Henry and Lori J. Withrow, and the employer is represented by counsel H. Dill Battle III.

² The Board of Review also affirmed a denial of authorization for a left foot injection, which the claimant does not challenge in this appeal.

³ The claimant is currently self-employed. He owns a logging company.

argues that the Board of Review, as affirmed by the ICA, properly affirmed the denial of a reopening of the claim and properly affirmed the denials of authorization.

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: March 19, 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