

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

James Kirk,
Claimant Below, Petitioner

v.) **No. 24-417** (JCN: 2023003296)
 (ICA No. 23-ICA-557)

West Virginia Paving, Inc.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner James Kirk appeals the May 23, 2024, memorandum decision of the Intermediate Court of Appeals (“ICA”). *See Kirk v. West Virginia Paving, Inc.*, No. 23-ICA-557, 2024 WL 2376941 (W. Va. Ct. App. May 23, 2024) (memorandum decision). Respondent West Virginia Paving, Inc. filed a timely response.¹ The issue on appeal is whether the ICA erred in affirming the November 27, 2023, order of the Board of Review, which affirmed the claim administrator’s orders dated March 30, 2023, and April 26, 2023. In the March 30, 2023, order, the claim administrator closed the claim for temporary total disability benefits because there was no medical evidence showing that the claimant continued to be totally disabled. In the April 26, 2023, order, the claim administrator denied a request for authorization of a second opinion with neurosurgeon Raymond V. Harron, D.O., and a request for MRI studies of the thoracic spine, pelvis, and brain.

On appeal, the claimant argues that the ICA’s decision is clearly wrong and should be reversed because the preponderance of the evidence establishes that he continues to suffer from instability, pain and swelling from the compensable injury, which requires further treatment, referral for a second neurosurgical opinion, as well as additional MRI studies. The claimant further contends that his claim should not have been closed for temporary total disability benefits following his back surgery. The claimant asserts that the ICA should have reversed the Board of Review’s decision pursuant to *Conley v. Workers’ Comp. Div.*, 199 W. Va. 196, 483 S.E.2d 542 (1997), because the record establishes that the requested treatments are medically related and reasonably required to treat the compensable disease, and he continues to be temporarily and totally disabled due to the compensable disease. The employer counters by arguing that the Board of Review weighed the evidence carefully and affirmed the orders denying treatment and closing the claim for temporary total disability benefits. As such, the ICA’s decision was correct and the claimant’s petition for appeal should be refused.

¹ The petitioner is represented by counsel Reginald D. Henry, and Lori J. Withrow, and the respondent is represented by counsel Steven K. Wellman and James W. Heslep.

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