

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Steve A. Dolin,
Claimant Below, Petitioner

v.) **No. 24-472** (JCN: 2015013891)
(ICA No. 24-ICA-21)

Ramsey Tire, Inc., d/b/a
Tic Toc Tire South,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Steve A. Dolin appeals the July 1, 2024, memorandum decision of the Intermediate Court of Appeals of West Virginia (“ICA”). *See Dolin v. Ramsey Tire, Inc.*, No. 24-ICA-21, 2024 WL 3252635 (W. Va. Ct. App. Jul. 1, 2024) (memorandum decision). Respondent Ramsey Tire, Inc. d/b/a Tic Toc Tire South filed a timely response.¹ The issue on appeal is whether the ICA erred in affirming the December 20, 2023, decision of the West Virginia Workers’ Compensation Board of Review, which affirmed the claim administrator’s August 12, 2022, order granting an additional 4% for a total award of 17% permanent partial disability.

The claimant asserts that the Board of Review erred in finding that the report of Michael J. Kominsky, D.C., was an outlier because he provided a higher impairment rating for the thoracic spine than the impairment ratings provided by Bruce A. Guberman, M.D., and David L. Soulsby, M.D.² The claimant argues that the Board failed to recognize that his thoracic condition had progressed and is interfering with daily activities such as household chores and sleeping. The claimant argues that Dr. Kominsky produced the most recent report, which reflects his current thoracic impairment. Therefore, the claimant argues that he should be granted 3% permanent partial disability in addition to the 17% permanent partial disability previously granted for a total award of 20% permanent partial disability based upon Dr. Kominsky’s report. The employer counters by arguing that the Board of Review, the trier of fact, properly found that Dr. Kominsky’s report was flawed. The employer argues that the medical evidence shows that the claimant has not received treatment for his thoracic spine since 2015. Thus, in light of the whole record, the employer argues that Dr. Kominsky’s report was less persuasive than Drs. Guberman’s and

¹ The claimant is represented by counsel Reginald D. Henry and Lori J. Withrow. The employer is represented by counsel Steven K. Wellman and James W. Heslep.

² In his argument, the claimant refers to Joseph E. Grady II, M.D., instead of Dr. Soulsby. However, the claimant likely means to refer to Dr. Soulsby due to the Board of Review’s finding that Drs. Guberman’s and Soulsby’s reports were more persuasive than Dr. Kominsky’s report.

Soulsby's reports, and this Court should affirm the 4% permanent partial disability award already granted for a total award of 17% permanent partial disability.

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: April 22, 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