

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

James F. Martin,
Claimant Below, Petitioner

v.) **No. 24-478** (JCN: 2016002953)
(ICA No. 24-ICA-27)

Eastern Associated Coal, LLC,
Employer Below, Respondent, and
Insurance Commissioner of West Virginia
in his capacity as Administrator
of the “Old Fund,” Respondent

MEMORANDUM DECISION

Petitioner James F. Martin appeals the July 1, 2024, decision of the Intermediate Court of Appeals of West Virginia (“ICA”). *See Martin v. E. Associated Coal, LLC*, No. 24-ICA-27, 2024 WL 3252636 (W. Va. Ct. App. Jul. 1, 2024) (memorandum decision). Respondent Insurance Commissioner of West Virginia (“Insurance Commissioner”), in his capacity as Administrator of the “Old Fund,” filed a timely response.¹ The issue on appeal is whether the ICA erred in affirming the December 19, 2023, decision of the West Virginia Workers’ Compensation Board of Review affirming the claim administrator’s denial of the claimant’s application for a permanent total disability award because he did not meet the required 50% threshold for consideration of such an award.

The claimant asserts that he satisfied the required 50% threshold to be considered for a permanent total disability award based on the report of Bruce A. Guberman, M.D. The Insurance Commissioner counters by arguing that the Board of Review was not clearly wrong in finding that Dr. Guberman’s report was unreliable because it was an outlier and that there was no credible evidence that the claimant met the required 50% threshold. Therefore, the Insurance Commissioner argues that the ICA did not err in affirming the Board of Review’s affirmation of the denial of the claimant’s application for a permanent total disability award.

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.*

¹ The claimant is represented by counsel Reginald D. Henry and Lori J. Withrow. The Insurance Commissioner is represented by counsel Steven K. Wellman and James W. Heslep. The employer, Eastern Associated Coal, LLC, did not file a response.

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:

Justice Elizabeth D. Walker
Justice Tim Armstead
Justice C. Haley Bunn
Justice Charles S. Trump IV

DISSENTING:

Chief Justice William R. Wooton

Wooton, Chief Justice, dissenting:

I dissent to the majority's resolution of this case. I would have set this case for oral argument to thoroughly address the error alleged in this appeal. Having reviewed the parties' briefs and the issues raised therein, I believe a formal opinion of this Court was warranted, not a memorandum decision. Accordingly, I respectfully dissent.