

**STATE OF WEST VIRGINIA**  
**SUPREME COURT OF APPEALS**

**Blackhawk Mining, Inc.,**  
**Employer Below, Petitioner**

v.) **No. 24-497** (JCN: 2021003682)  
(ICA No. 24-ICA-31)

**Archie Caldwell,**  
**Claimant Below, Respondent**

**MEMORANDUM DECISION**

Petitioner Blackhawk Mining, Inc. appeals the July 1, 2024, memorandum decision of the Intermediate Court of Appeals of West Virginia (“ICA”). *See Blackhawk Mining, Inc. v. Caldwell*, No. 24-ICA-31, 2024 WL 3252630 (W. Va. Ct. App. Jul. 1, 2024) (memorandum decision). Respondent Archie Caldwell filed a timely response.<sup>1</sup> 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 reversed the claim administrator’s August 3, 2022, order and granted an additional 13% for a total award of 21% permanent partial disability.

The employer asserts that, because the evidence did not support a finding of postoperative radiculopathy, the Board of Review should have rejected the report of Bruce A. Guberman, M.D., and affirmed the claim administrator’s order granting 8% permanent partial disability based upon the report of Prasadarao B. Mukkamala, M.D.<sup>2</sup> The claimant counters by arguing that the Board compared the two reports and found that Dr. Guberman’s report was better supported by the record, which revealed that the claimant’s compensable radiculopathy did not resolve after he underwent an L5-S1 spinal fusion. The claimant argues that Dr. Mukkamala failed to include radiculopathy in his impairment rating. While the employer asserts that the ICA erred in affirming the Board’s decision, the claimant argues it is clear that the employer merely disagrees with the lower tribunals’ rulings. In its reply, the employer argues that it is not suggesting that the Board of Review improperly weighed the evidence or improperly relied upon the report of Dr. Guberman over Dr. Mukkamala’s report. Instead, the employer argues that the claimant failed to meet his burden of

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<sup>1</sup> The employer is represented by counsel Billy R. Shelton. The claimant is represented by counsel Reginald D. Henry and Lori J. Withrow.

<sup>2</sup> Michael J. Kominsky, D.C., also evaluated the claimant for permanent impairment. The Board of Review found Dr. Kominsky’s report unreliable as he failed to apportion impairment due to the claimant’s well-documented history of prior lower back injuries, a finding that neither party challenges.

proof by establishing by a preponderance of the evidence that he was entitled to more than the 8% permanent partial disability awarded by the claim administrator.

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