

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Barry K. Alban,
Claimant Below, Petitioner

v.) No. 24-690 (JCN: 2021013319)
(ICA No. 24-ICA-104)

West Virginia Division of Highways,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Barry K. Alban appeals the October 1, 2024, memorandum decision of the Intermediate Court of Appeals of West Virginia (“ICA”). *See Alban v. W. Va. Div. of Highways*, No. 24-ICA-104, 2024 WL 4363063 (W. Va. Ct. App. Oct. 1, 2024) (memorandum decision). Respondent West Virginia Division of Highways filed a timely response.¹ The issue on appeal is whether the ICA erred in affirming the February 12, 2024, decision of the West Virginia Workers’ Compensation Board of Review, which affirmed the claim administrator’s order awarding an additional 0% permanent partial disability above the 3% award previously granted.

The claimant asserts that the Board of Review was clearly wrong in finding the report of Jennifer L. Lultschik, M.D., more persuasive than the report of Karl C. Boone, D.C. The claimant argues that Dr. Boone properly recognized the claimant’s ongoing complaints as a result of the compensable injury and correctly applied the American Medical Association’s *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) and West Virginia Code of State Rules § 85-20 to conclude that the claimant had 8% impairment from the compensable work injury. Therefore, the claimant argues that he should be granted an additional 5% for a total award of 8% permanent partial disability. The employer counters by arguing that, as the trier of fact, the Board of Review determined that Dr. Lultschik’s report was the more persuasive report. The employer argues that the ICA properly afforded deference to the Board’s finding and affirmed its affirmation of the additional 0% permanent partial 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. 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).

¹ The claimant is represented by counsel J. Thomas Greene Jr. and T. Colin Greene. The employer is represented by counsel Steven K. Wellman and James W. Heslep.

Affirmed.

ISSUED: May 28, 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