

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Mark Lucey,
Claimant Below, Petitioner

v.) **No. 24-701** (JCN: 2017005763)
 (ICA No. 24-ICA-102)

Murray American Energy, Inc.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Mark Lucey appeals the October 1, 2024, memorandum decision of the Intermediate Court of Appeals (“ICA”). *See Lucey v. Murray American Energy, Inc.*, No. 24-ICA-102, 2024 WL 4360205 (W. Va. Ct. App. Oct. 1, 2024) (memorandum decision). Respondent Murray American Energy, Inc. filed a timely response.¹ The issue on appeal is whether the ICA erred in affirming the February 12, 2024, order by the Board of Review, which affirmed the September 12, 2022, claim administrator’s order granting no additional award above the previous 10% permanent partial disability award for occupational pneumoconiosis.

On appeal, the claimant argues that the ICA’s decision is clearly wrong in light of the substantial evidence in the record as a whole showing that the claimant has pulmonary impairment attributable to his occupational exposure in excess of the previously awarded 10%. The claimant asserts that testing has reliably shown that he has as much as 25% pulmonary impairment. The claimant contends that the highest degree of impairment which has not been shown by explicit findings of fact to be unreliable, incorrect, or clearly attributable to some other identified disease, is the opinion of Neal Aulick, M.D., who recommended 20% impairment for occupational pneumoconiosis. The employer counters by arguing that the claimant failed to meet his burden of proving that the Occupational Pneumoconiosis Board’s findings and conclusions, upon which the claim administrator’s order was based, are clearly wrong. As a result, the employer submits that the ICA committed no error in affirming the Board of Review’s decision.

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 petitioner is represented by counsel J. Thomas Greene Jr. and T. Colin Greene, and the respondent is represented by counsel Aimee M. Stern.

Affirmed.

ISSUED: May 28, 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.