

**IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA**

**RONNIE DUNLAP,**  
**Claimant Below, Petitioner**

**v.) No. 24-ICA-454** (JCN: 2019009353)

**TOYOTA MOTOR MANUFACTURING WV, INC.**  
**Employer Below, Respondent**

**FILED**  
**June 6, 2025**

ASHLEY N. DEEM, CHIEF DEPUTY CLERK  
INTERMEDIATE COURT OF APPEALS  
OF WEST VIRGINIA

**MEMORANDUM DECISION**

Petitioner Ronnie Dunlap appeals the October 16, 2024, order of the Workers' Compensation Board of Review ("Board"). Respondent Toyota Motor Manufacturing WV, Inc., ("Toyota") filed a response.<sup>1</sup> Mr. Dunlap did not reply. The issue on appeal is whether the Board erred in affirming the claim administrator's order, which granted Mr. Dunlap a 1% permanent partial disability ("PPD") award for loss of sensation of the right upper extremity.

This Court has jurisdiction over this appeal pursuant to West Virginia Code § 51-11-4 (2024). After considering the parties' arguments, the record on appeal, and the applicable law, this Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision affirming the Board's order is appropriate under Rule 21 of the Rules of Appellate Procedure.

Prior to the PPD award currently at issue, on October 22, 2020, the claim administrator issued an order granting Mr. Dunlap a 4% PPD award for bilateral carpal tunnel syndrome based on a report from Prasadarao Mukkamala, M.D. This order was affirmed by the Office of Judges ("OOJ") on February 22, 2022.<sup>2</sup>

On September 2, 2022, Dr. Mukkamala performed an independent medical evaluation ("IME") of Mr. Dunlap and noted that he had evaluated Mr. Dunlap previously on October 20, 2020. Dr. Mukkamala stated that Mr. Dunlap's diagnosis is status post radial tunnel release and extensor fasciectomy with limited epicondylectomy at the right

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<sup>1</sup> Mr. Dunlap is represented by Patrick K. Maroney, Esq. Toyota is represented by Tracey B. Eberling, Esq.

<sup>2</sup> The OOJ's order dated February 22, 2022, is not in the record here, but it is referenced in the Board's order dated October 16, 2024, and Mr. Dunlap makes no assertion that the Board's finding of fact regarding the previous order is incorrect.

elbow; and opined that that Mr. Dunlap had reached maximum medical improvement for the compensable injury. Using the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (4<sup>th</sup> ed. 1993) ("*Guides*"), Dr. Mukkamala found that Mr. Dunlap had 0% impairment for normal range of motion measurements. Dr. Mukkamala opined that Mr. Dunlap had mild diminution of sensation in the distribution of the posterior antebrachial cutaneous nerve, which is a branch of the radial nerve, for which he estimated the sensory diminution at 20% from Table 11 on page 48 of the *Guides*; that according to Table 15 on page 54 of the *Guides*, total loss of sensation in the radial nerve distribution would account for 5% upper extremity impairment; that he estimated the sensory diminution at 20%; and that 20% of 5% would be 1% upper extremity impairment, which converts to 1% whole person impairment. Dr. Mukkamala concluded that Mr. Dunlap has 1% whole person impairment ("WPI") for the right elbow resulting from the compensable injury.

The claim administrator issued an order of September 12, 2022, granting Mr. Dunlap a 1% PPD award based on Dr. Mukkamala's report. Mr. Dunlap protested this order.

Mr. Dunlap underwent an IME performed by Bruce Guberman, M.D., on September 11, 2023. Dr. Guberman found that Mr. Dunlap had reached MMI. Using the *Guides*, Dr. Guberman found that Mr. Dunlap had 1% upper extremity impairment for range of motion abnormalities of the right elbow; 8% upper extremity impairment for right carpal tunnel syndrome for a combined impairment rating of 9% upper extremity impairment, or 5% WPI, which he recommended for the "right carpal tunnel syndrome and right lateral epicondylitis." For the left carpal tunnel syndrome, Dr. Guberman found 4% WPI, which he combined with the 5% WPI (for the right upper extremity) for a total of 9% WPI. Thus, he recommended an additional 5% PPD over the 4% PPD previously received by Mr. Dunlap.

On May 23, 2024, Hicks Manson, M.D., performed an IME of Mr. Dunlap and he found that Mr. Dunlap had reached MMI. Using the *Guides*, Dr. Manson found that Mr. Dunlap has 3% WPI for right carpal tunnel syndrome and 2% WPI for left carpal tunnel syndrome. For the "left" [sic]<sup>3</sup> elbow, Dr. Manson determined that there was no range of motion or sensory impairment, thus, he rated the right elbow at 0% WPI. Dr. Manson concluded that Mr. Dunlap had a 5% WPI for the compensable conditions under the Combined Values Chart.

On October 16, 2024, the Board affirmed the claim administrator's order granting Mr. Dunlap a 1% PPD award for his right elbow. The Board found that there is no evidence

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<sup>3</sup> We note that Dr. Mason identified the wrong elbow in his report. It is the right elbow, not the left, that is at issue in this appeal.

that Mr. Dunlap has greater than 1% WPI for the compensable right elbow injury. Mr. Dunlap now appeals the Board's order.

Our standard of review is set forth in West Virginia Code § 23-5-12a(b) (2022), in part, as follows:

The Intermediate Court of Appeals may affirm the order or decision of the Workers' Compensation Board of Review or remand the case for further proceedings. It shall reverse, vacate, or modify the order or decision of the Workers' Compensation Board of Review, if the substantial rights of the petitioner or petitioners have been prejudiced because the Board of Review's findings are:

- (1) In violation of statutory provisions;
- (2) In excess of the statutory authority or jurisdiction of the Board of Review;
- (3) Made upon unlawful procedures;
- (4) Affected by other error of law;
- (5) Clearly wrong in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Syl. Pt. 2, *Duff v. Kanawha Cnty. Comm'n*, 250 W. Va. 510, 905 S.E.2d 528 (2024).

Mr. Dunlap argues that he is entitled to an additional PPD award related to his bilateral carpal tunnel syndrome due to the evidence of continuing sensory deficits. Mr. Dunlap further argues that his prior claim related to bilateral carpal tunnel syndrome was not considered on the merits and, thus, should not be barred by res judicata. We disagree.

Here, the Board determined that there is no evidence that Mr. Dunlap has greater than 1% WPI for the compensable right elbow injury. The Board noted that Mr. Dunlap had previously received a 4% award for bilateral carpal tunnel syndrome that was affirmed by the OOI and determined that this component of the injury cannot be relitigated. The Board further noted that Drs. Mukkamala and Guberman both determined that Mr. Dunlap had 1% WPI for the right elbow.

We find that regardless of whether Mr. Dunlap's previous claim for PPD was considered on the merits, the claim was affirmed by the OOI on February 22, 2022.<sup>4</sup> As

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<sup>4</sup> We also note that Mr. Dunlap did not include the OOI's order dated February 22, 2022, in his appendix and thus, he is unable to support his claim that the previous protest was affirmed "by rule" and not upon the merits.

there is no indication that Mr. Dunlap protested the OOH's decision, any protest to this decision would now be time-barred. Further, there is no indication that Mr. Dunlap has filed to reopen this claim for additional PPD related to his bilateral carpal tunnel syndrome.<sup>5</sup> We agree with Toyota that to the extent Mr. Dunlap is seeking a reopening of the award for carpal tunnel syndrome, this appeal is not the correct mechanism to do so. Thus, we find no merit in Mr. Dunlap's arguments.

Upon review, we conclude that the Board was not clearly wrong in finding that there is no evidence that Mr. Dunlap has greater than 1% WPI for the compensable right elbow injury. As the Supreme Court of Appeals of West Virginia has set forth, "[t]he 'clearly wrong' and the 'arbitrary and capricious' standards of review are deferential ones which presume an agency's actions are valid as long as the decision is supported by substantial evidence or by a rational basis." Syl. Pt. 3, *In re Queen*, 196 W. Va. 442, 473 S.E.2d 483 (1996). With this deferential standard of review in mind, we cannot conclude that the Board was clearly wrong in affirming the claim administrator's order granting Mr. Dunlap a 1% PPD award for his right elbow.

Accordingly, we affirm the Board's October 16, 2024, order.

Affirmed.

**ISSUED:** June 6, 2025

**CONCURRED IN BY:**

Chief Judge Charles O. Lorensen  
Judge Daniel W. Greear  
Judge S. Ryan White

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<sup>5</sup> See West Virginia Code § 23-5-2 (2005) and West Virginia Code § 23-5-3a (2021).