## FILED July 28, 2025

C. CASEY FORBES, CLERK SUPREME COURT OF APPEALS OF WEST VIRGINIA

## STATE OF WEST VIRGINIA SUPREME COURT OF APPEALS

Jimmy R. Blankenship, Claimant Below, Petitioner

v.) No. 24-781 (JCN: 2021025714) (ICA No. 24-ICA-202)

Mullican Flooring, LP, Employer Below, Respondent

## MEMORANDUM DECISION

Petitioner Jimmy R. Blankenship appeals the October 28, 2024, memorandum decision of the Intermediate Court of Appeals of West Virginia ("ICA"). *See Blankenship v. Mullican Flooring, LP*, No. 24-ICA-202, 2024 WL 4601867 (W. Va. Ct. App. Oct. 28, 2024) (memorandum decision). Respondent Mullican Flooring, LP filed a timely response. The issue on appeal is whether the ICA erred in affirming the April 16, 2024, decision of the West Virginia Workers' Compensation Board of Review, which affirmed the claim administrator's February 28, 2022, order granting 5% permanent partial disability.

The claimant asserts that the Board of Review clearly erred in relying on the report of Jennifer L. Lultschik, M.D., in affirming the claim administrator's order granting only 5% permanent partial disability. The claimant argues that the Board relied on Dr. Lultschik's report merely because she was the most recent evaluator. Instead, the claimant argues that the Board should have relied on the report of Bruce A. Guberman, M.D., as his report was more reliable. Therefore, the claimant argues that he is entitled to 20% permanent partial disability based on Dr. Guberman's report. The employer counters by arguing that, while the claimant asserts that the Board of Review clearly erred in finding that Dr. Guberman produced the less reliable report, Dr. Guberman (1) rated the claimant for impairment regarding traumatic brain injury and cervical sprain when neither of those conditions were found to be a compensable component of this claim, and (2) misapplied the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993). Therefore, because Dr. Lultschik's report was the more reliable report, the employer argues that the Board, as affirmed by the ICA, properly upheld the claim administrator's order granting 5% permanent partial disability.

<sup>&</sup>lt;sup>1</sup> The claimant is represented by counsel Reginald D. Henry and Lori J. Withrow. The employer is represented by counsel Steven K. Wellman and James W. Heslep.

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: July 28, 2025** 

## **CONCURRED IN BY:**

Chief Justice William R. Wooton Justice Tim Armstead Justice C. Haley Bunn Justice Charles S. Trump IV