

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

**ACNR RESOURCES, INC.,
Employer Below, Petitioner**

FILED

vs.) No. 25-ICA-182 (JCN: 2023017153)

September 30, 2025

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

**SHINE KELLISON,
Claimant Below, Respondent**

MEMORANDUM DECISION

Petitioner ACNR Resources, Inc., (“ACNR”) appeals the April 8, 2025, order of the Workers’ Compensation Board of Review (“Board”). Respondent Shine Kellison filed a response.¹ ACNR did not file a reply. The issue on appeal is whether the Board erred in reversing the claim administrator’s order, which granted Mr. Kellison a 22% permanent partial disability (“PPD”) award, and instead granted him a 24% PPD award.

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.

Mr. Kellison injured his left hand and thumb on March 10, 2023, when he was working as a roof bolter for ACNR, and a piece of steel fell and struck his left hand and thumb. Mary Craft, APRN, treated Mr. Kellison at United Hospital Center (“UHC”) on the day of the injury. X-rays did not show an acute fracture or other abnormality. Nurse Craft completed an Employees’ and Physicians’ Report of Occupational Injury or Disease form and listed the diagnosis code for a crushing injury of the left hand as an occupational injury. Further, Nurse Craft placed Mr. Kellison on modified work duty.

On March 14, 2023, David Webster, PA-C, examined Mr. Kellison in the Orthopaedics & Sports Medicine office at UHC and assessed a crushing injury of the left hand and a left thumb that was painful and had decreased range of motion. PA Webster ordered an MRI of Mr. Kellison’s hand, which was performed on March 16, 2023, and showed only a cystic change, most likely a ganglion cyst (an incidental finding). On March 22, 2023, PA Webster ordered occupational therapy. On July 31, 2023, Mr. Kellison

¹ ACNR is represented by Aimee M. Stern, Esq. Mr. Kellison is represented by Linda N. Garrett, Esq., and Robert F. Vaughan, Esq.

requested a second opinion due to continued reduced grip strength and reduced sensation on his thumb, although an EMG did not reveal an abnormality.

On August 11, 2023, Prasadarao Mukkamala, M.D., examined Mr. Kellison for the compensable crush injury of the left hand. Dr. Mukkamala noted that the EMG study, performed in May of 2023, was normal and did not support carpal tunnel syndrome, ulnar neuropathy, or cervical radiculopathy. Dr. Mukkamala found a normal motor examination but some diminution of sensation over the left thumb and a positive Tinel's sign. Grip strength in the left hand was 7 kg compared to 47 kg in the right hand. Dr. Mukkamala felt that Mr. Kellison should be evaluated by an orthopedic surgeon and that he would benefit from corticosteroid injections. Based on his examination of Mr. Ellison, Dr. Mukkamala concluded that he had not reached maximum medical improvement ("MMI") for the injury, and although he recorded the range of motion measurements for the left hand and fingers, he did not recommend an impairment rating. Dr. Mukkamala included with his report the range of motion measurements he took for Mr. Kellison's left hand (and for a comparison, measurements of Mr. Kellison's right hand) on a completed "Figure 1" form from the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) ("*Guides*").

On August 31, 2023, Shafic A. Sraj, M.D., a hand, elbow, and shoulder orthopedic surgeon, examined Mr. Kellison for the left hand injury. Mr. Kellison reported that he continued to have difficulty with grip strength, numbness, and sensory changes in the thenar area, and occasionally his fingertips. Dr. Sraj noted subcutaneous discoloration in the left hand, but could not identify any structure that required surgery. Dr. Sraj offered two treatment options: 1) work conditioning to simulate his work, or 2) undergo a functional capacity evaluation to determine if he needs to change professions. Mr. Kellison chose to proceed with work conditioning.

On September 15, 2023, Dr. Mukkamala conducted a second examination of Mr. Kellison. Dr. Mukkamala noted that Dr. Sraj found no surgical defect and ordered three months of work conditioning. Dr. Mukkamala concluded that Mr. Kellison was at MMI. Using the *Guides* and the range of motion findings from his August 11, 2023, examination, Dr. Mukkamala opined that Mr. Kellison had a 22% WPI for loss of range of motion as a result of the work injury. Further, Dr. Mukkamala disagreed with Dr. Sraj's recommendation of work conditioning; instead, Dr. Mukkamala recommended a functional capacities evaluation and vocational evaluation to assist Mr. Kellison in returning to work.

By order dated September 20, 2023, the claim administrator issued an order granting Mr. Kellison a 22% PPD award based on Dr. Mukkamala's report dated September 15, 2023. Mr. Kellison protested this order.

Bruce A. Guberman, M.D., examined Mr. Kellison on April 24, 2024. Using the *Guides*, Dr. Guberman found range of motion abnormalities in Mr. Kellison's left wrist,

left thumb, and all fingers of the left hand. Dr. Guberman also noted a loss of grip strength on the left hand. He recorded the range of motion measurements on a Figure 1 worksheet from the *Guides*, which he included with his report. Based on these measurements, Dr. Guberman assessed a total of 24% WPI and noted that this represented a 2% additional PPD above the 22% that Mr. Kellison was previously granted. Dr. Guberman commented that, overall, he agreed with Dr. Mukkamala's report and impairment rating, but Mr. Kellison's condition had worsened since Dr. Mukkamala's evaluation, which was performed in September of 2023.

Dr. Mukkamala evaluated Mr. Kellison a third time on November 13, 2024.² Dr. Mukkamala conducted a range of motion examination of Mr. Kellison's left hand, thumb, and fingers, and commented that there was significant improvement in the wrist compared to the prior evaluation. Notably, Dr. Mukkamala now found complete resolution of impairment related to the left wrist and some improvement in the motion of the left hand. Dr. Mukkamala disagreed with Dr. Guberman's opinion that the impairment had progressed, and instead, felt that the opposite had occurred and that now, Mr. Kellison had only 16% WPI as a result of the injury. Further, Dr. Mukkamala opined that Mr. Kellison was capable of returning to work, provided he could limit the use of his left upper extremity to only assist and do most of the work with the right side. A functional capacities evaluation and vocational evaluation were also recommended, and Dr. Mukkamala acknowledged that he may have to consider vocational rehabilitation.

On April 8, 2025, the Board issued an order reversing the claim administrator's order granting Mr. Kellison a 22% PPD award, instead granting him an additional 2% PPD for a total of 24% PPD. Upon reviewing the reports of Drs. Mukkamala and Guberman, the Board found that an equal amount of evidentiary weight exists regarding Mr. Kellison's impairment. Thus, the Board referred to West Virginia Code § 23-4-1g (2003) and adopted Dr. Guberman's recommendation of 24% PPD. ACNR 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:

²A typographical error with respect to the date is noted on Dr. Mukkamala's report. The report date is November 11, 2024, yet he stated that he examined Mr. Kellison on November 13, 2024, two days after the report date.

- (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).

On appeal, ACNR argues that the Board erred in concluding that an equal amount of evidentiary weight exists regarding the amount of permanent impairment and thus applying West Virginia Code § 23-4-1g to resolve the issue. ACNR asserts that when Dr. Mukkamala examined Mr. Kellison for the third time, about seven months after Dr. Guberman's examination, he found improvement in the left wrist and hand ranges of motion. Thus, Dr. Mukkamala's impairment rating decreased from the 22% WPI that he found in 2023 to 16% in 2024. Further, ACNR notes that Dr. Mukkamala disagreed with Dr. Guberman's finding of increased impairment from 2023. Moreover, ACNR argues that Dr. Mukkamala's examination was the most recent evidence of Mr. Kellison's permanent impairment, and he concluded that Mr. Kellison's range of motion improved rather than worsened. Thus, ACNR contends that Dr. Guberman's assessment is less reliable than that of Dr. Mukkamala, and the Board's conclusion that there is an equal amount of evidentiary weight regarding Mr. Kellison's impairment is erroneous. We disagree.

Here, the Board determined that Drs. Mukkamala and Guberman found range of motion impairment related to the compensable injury, and that there was no evidence of record to determine that one assessment is more reliable than the other. Thus, the Board found the impairment ratings were of equal weight and applied West Virginia Code § 23-4-1g. In addressing West Virginia Code § 23-4-1g(a), the Supreme Court of Appeals of West Virginia has said:

[t]he factfinder in a workers' compensation case is thus vested with the statutory responsibility to weigh the conflicting medical opinions in terms of "relevance, credibility, materiality and reliability ... in the context of the issue presented." West Virginia Code § 23-4-1g(a) provides a default rule that states when a factfinder is presented with evidence of equal evidentiary weight, she must adopt "the resolution that is most consistent with the claimant's position[.]" When confronted with conflicting medical opinions, the factfinder must consider the entire record, clarify inconsistencies, and adequately explain her reasons for choosing one medical opinion over the other. A factfinder cannot resolve the discrepancy between medical opinions with a mere announcement that one expert is reliable; she must provide some

articulation for *why* that expert's opinion was selected, including an explanation of why that opinion was selected over another.

Gwinn v. JP Morgan Chase, No. 23-172, 2024 WL 4767011, at *4 (W. Va. Nov. 13, 2024) (memorandum decision).

Although the Board sometimes may find the most recent evaluation to be more persuasive, nothing requires such a finding. Upon review, we conclude that the Board's order was not clearly wrong. The Board did not err in finding that Drs. Guberman and Mukkamala were equally persuasive and, thus, adopting Dr. Guberman's findings as required by West Virginia Code § 23-4-1g.

Accordingly, we affirm the Board's April 8, 2025, order.

Affirmed.

ISSUED: September 30, 2025

CONCURRED IN BY:

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