

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

**JOSEPH TASSEY,**  
**Claimant Below, Petitioner**

**v.) No. 25-ICA-99** (JCN: 2023022585)

**JSG I, INC.,**  
**Employer Below, Respondent**

**FILED**  
**September 30, 2025**

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

**MEMORANDUM DECISION**

Petitioner Joseph Tassey appeals the February 12, 2025, order of the Workers' Compensation Board of Review ("Board"). Respondent JSG I, Inc., ("JSG") filed a response.<sup>1</sup> Mr. Tassey did not reply. The issue on appeal is whether the Board erred in affirming the claim administrator's order, which rejected the claim.

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.

On February 7, 2023, while employed by JSG, Mr. Tassey alleges that he sustained injuries to his left arm, neck, upper back, and face.<sup>2</sup> On March 21, 2023, Mr. Tassey was seen by April Vella-Powell, NP. Mr. Tassey complained of neck pain that worsens when

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<sup>1</sup> Mr. Tassey is represented by Patrick K. Maroney, Esq. JSG is represented by Daniel G. Murdock, Esq.

<sup>2</sup> Prior to the alleged occupational injury at issue in this case, on December 13, 2022, Mr. Tassey was seen by Derek Powell, M.D., his primary care physician. Mr. Tassey reported neck pain, decreased range of motion, and a knot on the back of his neck. Dr. Powell diagnosed a cervical sprain. On February 2, 2023, Mr. Tassey told Dr. Powell that his symptoms were so severe that he called off work that day. He stated that he was seeing Dr. Suresh Srinivasan for pain management, but would like to have a second opinion. Dr. Powell diagnosed cervical radiculopathy; trapezius muscle strain, left; and chronic pain syndrome. Dr. Powell indicated that he would refer Mr. Tassey to Luxmi Gahlot, M.D.

he is working on his computer. NP Vella-Powell assessed cervical pain and chronic back pain. On May 17, 2023, NP Vella-Powell reported that Mr. Tassey has a history of chronic neck pain, but that the pain progressively worsened over the prior week. Mr. Tassey stated that the symptoms worsened after he began working long hours. Mr. Tassey indicated that he wanted to complete Family Medical Leave Act (“FMLA”) forms. A cervical x-ray performed on March 22, 2023, revealed degenerative disc disease from C5-C6 through C7-T1 with narrowing of the intervertebral foramen bilaterally.

Mr. Tassey submitted an Employees’ and Physicians’ Report of Occupational Injury or Disease dated June 2, 2023, indicating that on February 7, 2023, he sustained injuries to his left arm, neck, upper back, and face. Mr. Tassey stated that the “wrist tie backs left wire looped around left arm of press and snatched to the left hard.” The physician’s section of the application was completed by a representative of WorkCare, who diagnosed a cervical neck sprain with severe neural encroachment at C6-C7. The injury was classified as an occupational injury, and Mr. Tassey was advised to return to modified duty.

On June 6, 2023, Mr. Tassey was seen by Roxane Gates, APRN-CNP. Mr. Tassey reported that on February 7, 2023, his wrist band got caught in a roller, jerking him to his left side, and causing pain to his neck, left arm, shoulder area, and face. APRN Gates indicated she would refer Mr. Tassey to physical therapy and to a neurosurgeon. APRN Gates completed a Physician’s Report of Work Ability dated June 6, 2023, indicating that Mr. Tassey was able to lift 10 pounds on an occasional basis.

A First Report of Injury or Illness form dated June 8, 2023, completed by Jay Mitchell of JSG’s Human Resources/Personnel Department, indicated that JSG was notified of the alleged injury on June 7, 2023. Mr. Mitchell stated that on February 7, 2023, Mr. Tassey told the supervisor that he thought he had hurt his neck and shoulder a few weeks before when he was operating equipment.

On June 16, 2023, Mr. Tassey underwent an MRI of his cervical spine, revealing severe bilateral foraminal encroachment at C6-C7. Dr. Powell diagnosed cervical disc disease. On June 19, 2023, APRN Gates reported that Mr. Tassey continued to have neck pain with numbness to the left side of his face radiating down to his upper shoulder area. She stated that the employer took Mr. Tassey off work. APRN Gates diagnosed an acute cervical strain and C6-C7 encroachment.

The claim administrator issued an order dated June 23, 2023, rejecting the claim due to a finding that Mr. Tassey did not suffer an injury in the course of and resulting from his employment. Mr. Tassey protested this order. On August 22, 2023, APRN Gates indicated that Mr. Tassey continued to complain of neck pain and numbness to the left side of his neck radiating across the top of his left shoulder.

On September 3, 2024, Mr. Tassey was evaluated by Jennifer Lultschik, M.D. Dr. Lultschik noted that Mr. Tassey reported tingling in his left cheek, a sensation like bugs crawling on his scalp, tingling and numbness in his arms and hands, and pain on the left side of his neck radiating into his left trapezius. Mr. Tassey told Dr. Lultschik that he was unable to recall the precise date of the injury, and that he never had pain or problems in his neck or shoulders prior to the injury on February 7, 2023, or February 9, 2023. Dr. Lultschik indicated that Mr. Tassey's representations that he never had any pain or problem in his neck before February 7, 2023, or February 9, 2023, were inconsistent with the medical record, which documented two visits for chronic neck pain with Dr. Powell prior to the date of the alleged injury. Further, Dr. Lultschik noted that the reports from Dr. Powell's office dated March 21, 2023, through May 17, 2023, did not document any history of a work injury. Dr. Lultschik opined that it was not credible that Mr. Tassey would have failed to mention a work incident that made his neck snap or feel like it was broadsided. Dr. Lultschik further noted that Mr. Tassey only sought care with Trinity WorkCare and filed a claim in June of 2023 after he was suspended for missing work. She further opined that Mr. Tassey's symptoms were more likely than not related to his chronic degenerative cervical spondylosis and neck pain, and no workplace injury had occurred.

Mr. Tassey was deposed on October 24, 2023, and he testified that he worked for JSG in the Stamping Division and his job was to run multiple kinds of presses. Mr. Tassey stated that he was required to wear tiebacks/cables to prevent injury to his hands. He testified that on February 9, 2023, the plastic coating on the cable he was wearing was frayed, the cable wrapped around the arm of the press, and when he tripped the press off, it jerked him to the left. Mr. Tassey compared the incident to being hit broadside in a car accident, such that his body was "snapped," and he felt a "snatch" in his neck like whiplash. He testified that after he got home, his shoulder and neck started hurting on the left side, and the next morning, he notified JSG when he couldn't move his neck. Mr. Tassey stated that JSG encouraged him to file for FMLA so that he would not be penalized if he had to miss work, and Dr. Powell's office helped him fill out FMLA paperwork. Mr. Tassey stated that he was suspended for two weeks because he missed work and FMLA was not approved. Afterward, he decided he needed to file a workers' compensation claim. Mr. Tassey stated that when JSG was informed of his restrictions, it told him to report off until further notice, and the last day he worked was June 2, 2023. Mr. Tassey testified that he never had a problem with his neck or shoulder or any treatment for his neck or shoulder prior to this injury. Mr. Tassey was asked about the date of injury, and stated that he thought it was February 9, 2023, but it might have been February 7, 2023.

On February 12, 2025, the Board affirmed the claim administrator's order, which rejected the claim. The Board found that Mr. Tassey failed to establish that he suffered an occupational injury to his neck or shoulder on February 7, 2023, or February 9, 2023. Mr. Tassey 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. Tassey argues that, while he did receive treatment for his neck pain prior to his occupational injury, his symptoms were both different and increased following the injury. For instance, Mr. Tassey asserts that he developed radiculopathy after his injury, and that Dr. Lultschik failed to consider the differences between his preinjury symptoms versus those he suffered following the injury. Mr. Tassey further argues that he clearly described how the injury occurred, and the injury was not disputed by JSG when it was reported.

Three elements must coexist in workers' compensation cases to establish compensability: (1) a personal injury, (2) received in the course of employment, and (3) resulting from that employment. *Barnett v. State Workmen's Comp. Comm'r*, 153 W. Va. 796, 172 S.E.2d 698 (1970); *Sansom v. Workers' Comp. Comm'r*, 176 W. Va. 545, 346 S.E.2d 63 (1986). Further, the burden of proof to establish a workers' compensation claim "rests upon the one who asserts it." Syl. Pt. 1, *Deverick v. State Comp. Dir.*, 150 W. Va. 145, 144 S.E.2d 498 (1965).

Here, the Board determined that Mr. Tassey failed to establish that he sustained an injury in the course of and resulting from his employment. The Board noted that Mr. Tassey began receiving care for his neck and shoulder prior to the alleged injury. The Board further noted that medical records indicate that Mr. Tassey had preexisting degenerative disc disease, which Dr. Lultschik opined is the cause of his symptoms. Further, the Board found that Mr. Tassey is not credible based on his testimony and medical records. The Board

noted that Mr. Tassey had treatment to the cervical spine prior to the alleged injury. On December 13, 2022, Mr. Tassey complained of neck pain with decreased range of motion for several months. He was diagnosed with a cervical sprain. On February 2, 2023, Mr. Tassey complained of chronic neck pain that was “so severe that he called off work today.” Mr. Tassey was seeing a pain management physician, and Dr. Powell diagnosed cervical radiculopathy and chronic pain syndrome.<sup>3</sup> The Board also noted that Mr. Tassey’s medical records do not mention a February workplace injury until June 14, 2023, and that Dr. Lultschik opined that Mr. Tassey was not credible due to his failure to report a workplace injury while receiving care from Dr. Powell.

Upon review, we conclude that the Board was not clearly wrong in finding that Mr. Tassey failed to establish that he sustained an injury in the course of and resulting from his employment. Further, we conclude that the Board was not clearly wrong in finding that Mr. Tassey was not credible. *See Martin v. Randolph Cnty Bd. of Educ.*, 195 W. Va. 297, 306, 465 S.E.2d 399, 408 (1995) (“We cannot overlook the role that credibility places in factual determinations, a matter reserved exclusively for the trier of fact. We must defer to the ALJ’s credibility determinations and inferences from the evidence . . .”).

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 rejecting the claim.

Accordingly, we affirm the Board’s February 12, 2025, order.

Affirmed.

**ISSUED:** September 30, 2025

**CONCURRED IN BY:**

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

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<sup>3</sup> We also note that Mr. Tassey denied prior cervical treatment in his deposition.