FILED
September 12, 2025
C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Letina Carter,
Claimant Below, Petitioner

v.) **No. 25-124** (JCN: 2023022970)
(ICA No. 24-ICA-283)

Humana, Inc.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Letina Carter appeals the December 23, 2024, memorandum decision of the Intermediate Court of Appeals ("ICA"). *See Carter v. Humana, Inc.*, No. 24-ICA-283, 2024 WL 5201014 (W. Va. Ct. App. Dec. 23, 2024) (memorandum decision). Respondent Humana, Inc. filed a timely response.[1] The issue on appeal is whether the ICA erred in affirming the June 11, 2024, order of the Workers' Compensation Board of Review, which affirmed the claim administrator's order dated June 14, 2023, rejecting the claim.

On appeal, the claimant argues that the ICA was clearly wrong in finding that the claimant did not show by a preponderance of evidence that she sustained an injury in the course of and resulting from her employment. The claimant contends that the preponderance of the evidence establishes that she sustained a right knee sprain from her employment and meets the presumption under *Moore v. ICG Tygart Valley, LLC*, 247 W. Va. 292, 879 S.E.2d 779 (2022). As such, the claimant asserts that she suffered a compensable occupational injury within the framework of West Virginia workers' compensation law. The employer counters by arguing that the evidence shows that the claimant merely felt knee pain when standing from a seated position, and her employment posed no increased risk of injury under the criteria set forth in *Hood v. Lincare Holdings, Inc.*, 249 W. Va. 108, 894 S.E.2d 890 (2023).[2]

[1] The petitioner is represented by counsel Reginald D. Henry and Lori J. Withrow, and the respondent is represented by counsel Steven K. Wellman and James W. Heslep.

[2] In *Hood*, this Court addressed criteria for determining whether an injury resulted from a claimant's employment. Syllabus Point 4 of *Hood* provides that: "In the context of workers' compensation law, there are four types of injury-causing risks commonly faced by an employee at work: (1) risks directly associated with employment; (2) risks personal to the claimant; (3) mixed risks; and (4) neutral risks." 249 W. Va. at 110, 894 S.E.2d at 892, Syl. Pt. 4. Under the increased risk test, injuries are compensable if the employment exposed the claimant to a risk greater than

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: September 12, 2025

CONCURRED IN BY:

Justice C. Haley Bunn
Justice Charles S. Trump IV
Justice Thomas H. Ewing
Senior Status Justice John A. Hutchison

DISSENTING:

Chief Justice William R. Wooton

Wooton, Chief Justice, dissenting:

I respectfully dissent, as I believe that the Workers' Compensation Board of Review ("the Board") erred in concluding that the risk for petitioner Letina Carter ("Ms. Carter") in standing up from what was described as a very low sofa located in a client's home was not "qualitatively peculiar to [her] employment[.]" *See* Syl. Pt. 5, in part, *Hood v. Lincare Holdings, Inc*., 249 W. Va. 108, 894 S.E.2d 890 (2023). As noted in my dissenting opinion in *Hood*, although arising from a seated position may reasonably be deemed "a neutral risk activity – an activity that is engaged in routinely by the overwhelming majority of the population[,]" *id*. at 118, 894 S.E.2d at 900 (Wooton, J., dissenting), the undisputed evidence in this case was that (1) Ms. Carter was required to do so in clients' homes during the course of her employment, and (2) arising from the sofa in this client's home was different from the norm in that the sofa was so low to the ground.

In short, I believe that the majority's mechanical application of the risk activity rule of *Hood* has worked an injustice in this case, where the undisputed evidence was that Ms. Carter's pre-existing osteoarthritis had never been symptomatic prior to the work-related incident and that her weight had never caused any pain or instability in her knee. Indeed, the opinion of Dr. Nabet that these factors – osteoarthritis and obesity – were "likely" the cause of her knee sprain is pure

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that to which the general public was exposed. If the risk resulting in injury is one which everyone may be subjected, instead of a hazard peculiar to the employee's work, the injury is not compensable.

speculation, unmoored to any medical evidence of record. *See* Syl. Pt. 5, in part, *Moore v. ICG Tygart Valley, LLC*, 247 W. Va. 292, 879 S.E.2d 779 (2022) ("A claimant's disability will be presumed to have resulted from the compensable injury if: (1) before the injury, the claimant's preexisting disease or condition was asymptomatic, and (2) following the injury, the symptoms of the disabling disease or condition appeared and continuously manifested themselves afterwards.").

Finally, it is difficult to reconcile the Court's application of *Hood* in the instant case with this Court's recent decision in *Foster v. PrimeCare Med. of W. Va, Inc*., __ W. Va. __, __, 916 S.E.2d 364, 369-70 (2025), where we specifically eschewed reliance on a risk-determinative analysis in determining causation. In *Foster*, where the employer relied on evidence showing that workers in the health care industry did not have an increased risk of contracting COVID-19, we found that "it [would defy] logic to hold that because Ms. Foster was not exposed to a statistically higher risk of workplace exposure as a result of her profession, no amount of proof could satisfy her statutory burden to prove that in fact she contracted COVID-19 from known exposures at work." __ W. Va. at __, 916 S.E.2d at 369

In my view, our analysis in *Foster* compels the conclusion that while Ms. Carter may have been engaged in a neutral risk activity at the time of her injury, the facts and circumstances of this case, all of which were established by undisputed evidence, demonstrate that the injury was sustained as a result of Ms. Carter's employment and was thus compensable.

For these reasons, I respectfully dissent.