

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

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

Abby L. Boyes,
Claimant Below, Petitioner

v.) No. 25-200 (JCN: 2021008259)
(ICA No. 24-ICA-203)

Hospice of Southern West Virginia, Inc.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Abby L. Boyes appeals the January 29, 2025, memorandum decision of the Intermediate Court of Appeals (“ICA”). *See Boyes v. Hospice of S. W. Va., Inc.*, No. 24-ICA-203, 2025 WL 327388 (W. Va. Ct. App. Jan. 29, 2025) (memorandum decision). Respondent Hospice of Southern West Virginia, Inc. filed a timely response.¹ The issue on appeal is whether the ICA erred in affirming in part and reversing in part the April 16, 2024, order of the Workers’ Compensation Board of Review. In its order, the Board of Review affirmed the claim administrator’s orders, which 1) denied the claimant’s request to add a crushing injury of the right foot, ligament disorder of the right foot, Morton’s neuroma, and capsulitis of the right foot as compensable conditions under the claim; 2) denied authorization for right foot surgery; and 3) closed the claim for temporary total disability benefits. The ICA concluded that the Board of Review was clearly wrong in finding that Ms. Boyes failed to establish that the diagnosis of crushing injury of the right foot was causally related to the compensable injury. The ICA found the Board of Review’s logic to be flawed and concluded that the *Moore v. ICG Tygart Valley, LLC*, 247 W. Va. 292, 879 S.E.2d 779 (2022), presumption was not rebutted due to Ms. Boyes’ prior foot injuries. Thus, the ICA held that the crushing injury of the right foot is compensable in the instant claim.²

¹ The petitioner is represented by counsel Reginald D. Henry and Lori J. Withrow, and the respondent is represented by counsel Charity K. Lawrence.

² It does not appear that the portion of the ICA’s decision reversing the Board of Review is at issue in the appeal to this Court. The petitioner appeals solely regarding the denied diagnoses of ligament disorder, Morton’s neuroma, the denied surgery, and the closure of the claim for temporary total disability benefits.

On appeal, the claimant argues that the ICA was clearly wrong in its memorandum decision affirming the Board of Review's decision because she is entitled to the presumption under *Moore*, and that she sustained disorder ligament of the right foot, and Morton's neuroma of the third interspace of the right foot as a direct result of the compensable injury. Because the diagnoses require further treatment, the claimant contends that the right foot excision of neuroma should have been approved because the record provides that the procedure is reasonably related and medically necessary to the compensable condition. The claimant also argues that temporary total disability benefits should have been approved as a result of the necessary procedure and recovery process. The employer counters by arguing that the requested diagnoses were not received in the course of and resulting from the claimant's compensable work injury. Therefore, the employer maintains that the requested surgery is not medically necessary and reasonably required in regard to the compensable injury, and that the closure of the claim for temporary total disability benefits was proper because the claimant returned to work.

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 the medical evidence of record clearly and conclusively establishes that the diagnoses of ligament disorder of the right foot and Morton's neuroma were compensable components of Abby L. Boyes' claim. The Intermediate Court of Appeals' ("ICA") decision to the contrary is puzzling, especially in light of its holding that the West Virginia Board of Review ("the Board") was "clearly wrong in finding that Ms. Boyes failed to establish that the diagnosis of a crushing injury of the right foot was causally related to the compensable injury." See *Boyes v. Hospice of Southern W. Va., Inc.*, No. 24-ICA-203, 2025 WL 327388, at *4 (2025)

(memorandum decision). I can find no principled basis on which to conclude that the latter finding was clearly erroneous while the former finding was somehow “plausible in light of the record viewed in its entirety.” *Id.* (citations omitted).

In this regard, it appears that the evidence upon which the Board relied was highly suspect because there is nothing in the record to indicate that the claimant’s pre-existing degenerative changes were ever symptomatic prior to the work-related injury,¹ and nothing in the record to indicate that injuries to her foot were somehow related to her obesity. I do not believe that a reviewing court is required to give deference to speculation, even where, as here, that speculation is dressed up as “opinion.”

In my view, this case should have been placed on the Rule 19 docket for oral argument and in-depth consideration of the parameters of deference in a case where the Board’s findings are shaky, at best.

For these reasons, I respectfully dissent.

¹ 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.”).