

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

**MARSHALL COUNTY COAL RESOURCES,
Employer Below, Petitioner**

v.) No. 25-ICA-480 (JCN: 2024015115)

**JOSHUA KESSLER,
Claimant Below, Respondent**

**FILED
June 2, 2026**

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

MEMORANDUM DECISION

Petitioner Marshall County Coal Resources (“MCCR”) appeals the November 12, 2025, order of the Workers’ Compensation Board of Review (“Board”).¹ Respondent Joshua Kessler timely filed a response. MCCR did not reply. The issue on appeal is whether the Board erred in reversing the claim administrator’s order, which denied additional temporary total disability (“TTD”) benefits.

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 West Virginia Rules of Appellate Procedure.

On February 22, 2024, while employed by MCCR, Mr. Kessler sustained an injury to his head when a concrete block wall that he was building fell, and a block struck him in the head and knocked him off a four-foot ladder. An ambulance transported Mr. Kessler to Reynolds Memorial Hospital. There, Mr. Kessler denied loss of consciousness, denied neck or back pain, and denied any other injury. A cervical CT scan revealed moderately advanced C5-C6 degenerative disc disease, but no active cervical fracture. The assessment was closed head injury and dental abscess.

Mr. Kessler completed an Employees’ and Physicians’ Report of Occupational Injury or Disease dated February 22, 2024, indicating that he suffered a head injury. Richard Houck, D.O., of Reynolds Memorial Hospital, completed the physician’s section of the application and diagnosed a head injury. On February 26, 2024, Erona Reza, M.D.,

¹ MCCR is represented by Aimee M. Stern, Esq. Mr. Kessler is represented by Sandra K. Law, Esq.

and Brandon Glover, M.D., examined Mr. Kessler, who reported that he had experienced constant headaches since February 22, 2024, and bruising on his ribs made it difficult to breathe. The physicians assessed a head injury due to trauma and concussion.

On February 27, 2024, Mr. Kessler began treatment with Marcus Cervantes, M.D. Mr. Kessler complained of constant headaches, intermittent dizziness, and twitching in his right eye. Dr. Cervantes noted a linear abrasion, approximately three inches long, to the left temple and mild edema. Dr. Cervantes indicated that Mr. Kessler had a normal range of motion of his neck with no rigidity or tenderness. The assessment was a head injury due to trauma.

On March 1, 2024, Aaron Monseau, M.D., saw Mr. Kessler and diagnosed a concussion. Mr. Kessler reported that he continued to have significant headaches. Dr. Monseau recommended a neurology referral. The claim administrator issued an order dated March 5, 2024, holding the claim compensable for a concussion without loss of consciousness.

Mr. Kessler followed up with Dr. Cervantes on March 12, 2024. Mr. Kessler reported no improvement since the last evaluation with the concussion clinic. Dr. Cervantes diagnosed a concussion without loss of consciousness and referred Mr. Kessler to physical therapy. Dr. Cervantes completed an Attending Physician's Report dated March 18, 2024, indicating that Mr. Kessler was unable to return to full duty work.

On March 18, 2024, Mr. Kessler began treatment with Michael Ebbert, D.O., a neurologist. Dr. Ebbert assessed concussion without loss of consciousness, cervical strain, occipital neuritis, imbalance, convergence insufficiency, and post-traumatic headache. He referred Mr. Kessler to physical therapy and occupational therapy. On March 20, 2024, Teresa Rice, PT, completed a physical therapy evaluation. Ms. Rice reported that Mr. Kessler complained of dizziness, imbalance, headaches, anxiety, and difficulty sleeping. Ms. Rice recommended physical therapy for vestibular rehabilitation and medical management of his anxiety and sleep. On March 28, 2024, Dr. Cervantes noted that Mr. Kessler did not think he could return to work safely and that balance impairment is his biggest issue. Dr. Cervantes diagnosed a concussion without loss of consciousness, traumatic injury of the head, and strain of the neck.

From April 5, 2024, through August 6, 2024, Mr. Kessler underwent physical therapy at Healthworks Rehab and Fitness. The recommendations included skilled intervention to decrease pain, improve balance, improve function, improve motor control, increase range of motion, and increase strength. On May 21, 2024, Mr. Kessler reported that he continued to experience constant headaches and tightness in his neck. Mr. Kessler was instructed to continue with rehabilitative therapy two times per week for an additional four weeks.

On April 15, 2024, Dr. Ebbert stated that Mr. Kessler had anxiety and panic attacks. On April 18, 2024, Dr. Cervantes expressed concern regarding Mr. Kessler's balance issues. On April 25, 2024, Mr. Kessler underwent a cervical MRI revealing degenerative spondylosis of the cervical spine, most notably at C5-C6, where there was moderate to severe bilateral neural foraminal stenosis. On April 29, 2024, Dr. Cervantes opined that an MRI was consistent with degenerative changes with no acute findings attributable to head injury.

Prasadarao Mukkamala, M.D., performed an independent medical evaluation of Mr. Kessler on May 15, 2024. The assessment was a head injury with concussion. Dr. Mukkamala concluded that Mr. Kessler should complete the electrodiagnostic evaluation, which was scheduled for May 30, 2024. Dr. Mukkamala opined that Mr. Kessler had not reached maximum medical improvement ("MMI").

On May 30, 2024, Dr. Ebbert stated that he suspected that the concussive injury was still playing a minor role in Mr. Kessler's symptoms. On June 20, 2024, Dr. Ebbert opined that cervical strain was an additional component of the cranio-cervical trauma.

Gerald Steiman, M.D., a neurologist, completed an independent medical evaluation of Mr. Kessler dated July 24, 2024. Dr. Steiman concluded that Mr. Kessler had reached MMI for the allowed condition of concussion without loss of consciousness. With regard to Mr. Kessler's ongoing neck pain, Dr. Steiman opined that even a severe cervical sprain/strain should resolve in three to six months. Dr. Steiman noted that a cervical MRI demonstrated multi-level degenerative joint and disc disease. Dr. Steiman opined that the totality of Mr. Kessler's current symptom complex bore no relationship to the diagnosis of concussion without loss of consciousness, and that Mr. Kessler's continued and ongoing symptomatology could not be explained by a single and isolated concussion.

On July 31, 2024, the claim administrator issued an order suspending TTD benefits based on Dr. Steiman's report. On August 7, 2024, Dr. Cervantes authored a report indicating that Mr. Kessler reported he could not return to work with his current symptoms. Dr. Cervantes opined that a Functional Capacity Evaluation should be considered.

The claim administrator issued an order dated September 9, 2024, closing the claim for TTD benefits based on Dr. Steiman's finding that Mr. Kessler was at MMI. Mr. Kessler protested this order. On October 23, 2024, Mr. Kessler submitted a request for the addition of cervical strain and C5-C6 disc bulge to the claim as compensable conditions. The claim administrator issued an order dated November 1, 2024, denying the request to add cervical

disc displacement, strain of muscle, fascia, and tendon at the neck level as compensable components of the claim. Mr. Kessler protested this order.²

On June 10, 2025, the claim administrator issued an order denying additional TTD benefits based on Dr. Steiman's report dated July 24, 2024. Mr. Kessler protested this order. On November 12, 2025, the Board reversed the claim administrator's order, which denied additional TTD benefits. The Board found that, based on a preponderance of the evidence, Mr. Kessler is entitled to additional TTD benefits. MCCR 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).

MCCR argues that the cervical strain had reached MMI and did not render Mr. Kessler temporarily and totally disabled after July 31, 2024. MCCR further argues that Drs.

² On May 20, 2025, the Board issued an order that modified the claim administrator's November 1, 2024, order to reflect that cervical strain is a compensable condition and reversed the claim administrator's September 9, 2024, order which closed the claim for TTD benefits. The Board remanded the issue of TTD benefits to MCCR with instructions that it issue a protestable order regarding Mr. Kessler's entitlement to additional TTD benefits. This Court affirmed the Board's order. *See Marshall County Coal Resources v. Kessler*, No. 25-ICA-246, 2025 WL 3485879 (W. Va. Ct. App. Dec. 2, 2025) (memorandum decision).

Cervantes and Monseau both documented normal cervical range of motion and no neck pain shortly before TTD benefits were suspended. Finally, MCCR argues that Mr. Kessler’s medical records indicate that his cervical complaints were related to his non-compensable C5-C6 disc bulge, not his compensable cervical strain. We disagree.

Here, the Board noted that Dr. Ebbert assessed Mr. Kessler with cervical strain and indicated that he should remain off work while undergoing treatment. The Board found Dr. Ebbert’s reports to be credible and that the record contains no medical evidence refuting Dr. Ebbert’s opinion. The Board noted that the report relied on by MCCR, Dr. Steiman’s July 24, 2024, evaluation, was authored before May 20, 2025, when cervical strain was determined to be a compensable condition.

We defer to the Board’s credibility findings. *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 . . .”).

Upon review, we conclude that the Board was not clearly wrong in finding that Mr. Kessler established with medical evidence that he was entitled to TTD benefits from when benefits were last paid through July 3, 2025, and thereafter as substantiated by appropriate medical evidence. Further, we conclude that the Board was not clearly wrong in relying on Dr. Ebbert’s report. 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 reversing the claim administrator’s order, which denied additional TTD benefits.

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

Affirmed.

ISSUED: June 2, 2026

CONCURRED IN BY:

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