IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

FILED
August 27, 2026
ASHLEY N. DEEM, CHIEF DEPUTY CLERK
INTERMEDIATE COURT OF APPEALS
OF WEST VIRGINIA

STATE AUTO INSURANCE COMPANY,
Third Party Administrator,
Respondent Below, Petitioner

v.) No. 25-ICA-491 (OIC Admin. Proc. No. 25-IC-182490)

ERIN K. HUNTER, in her official capacity
as Insurance Commissioner of the
State of West Virginia,
Respondent

MEMORANDUM DECISION

Petitioner State Auto Insurance Company ("State Auto") appeals the October 10, 2025, order of the West Virginia Offices of the Insurance Commissioner. Respondent Erin K. Hunter, Insurance Commissioner of the State of West Virginia ("OIC") filed a response.[1] State Auto filed a reply.[2] The issue on appeal is whether the OIC erred in finding that State Auto failed to timely act as required by West Virginia Code of State Rules § 85-1-10.5.a (2009), and imposing a $1,500 fine on State Auto.

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 OIC's order is appropriate under Rule 21 of the West Virginia Rules of Appellate Procedure.

On October 9, 2024, on behalf of State Farm, ExamWorks issued a notice of an independent medical exam ("IME") to the workers' compensation claimant in the underlying claim. On December 9, 2024, Samuel E. Perry, D.O., issued a detailed report to ExamWorks noting that he found 8% impairment for the compensable injury. Dr. Perry

[1] State Auto is represented by T. Jonathan Cook, Esq. OIC is represented by Attorney General John B. McCuskey, Esq., and Deputy Attorney General Cassandra Means-Moore, Esq.

[2] We note that Milbank Insurance Company is the workers' compensation insurance carrier in the underlying workers' compensation claim. State Auto is the third-party administrator in the underlying claim. The term "carrier" is used interchangeably with the term "claim administrator" herein.

also included in his report answers to several questions asked of him by ExamWorks. On March 20, 2025, the claimant filed with the OIC a Failure to Timely Act Petition asserting that the claim administrator failed to enter a timely award based on Dr. Perry's IME report. On May 7, 2025, State Farm issued an order granting an 8% permanent partial disability ("PPD") award.

On July 14, 2025, the Workers' Compensation Board of Review ("the Board") issued a report to the OIC regarding the Failure to Timely Act Petition, finding that State Farm failed to timely act on the impairment rating by Dr. Perry. The Board noted that West Virginia Code of State Rules § 85-1-10.5.a provides that a claim administrator must act on a permanent disability evaluation within thirty days of receipt of the report. The Board determined that the claim administrator's five-month delay in acting on Dr. Perry's report and issuing the PPD award was a failure to timely act. On October 10, 2025, OIC issued a Final Order adopting the Board's report and finding that the insurance carrier violated the rule by failing to timely enter an award within thirty days of receiving an IME, and ordering the company to pay a penalty of $1,500 for the violation. State Auto now appeals this penalty.

Our standard of review is as follows:

> The court may affirm the order or decision of the agency or remand the case for further proceedings. It shall reverse, vacate, or modify the order or decision of the agency if the substantial rights of the petitioner or petitioners have been prejudiced because the administrative findings, inferences, conclusions, decision, or order are:
>
> (1) In violation of constitutional or statutory provisions;
> (2) In excess of the statutory authority or jurisdiction of the agency;
> (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.

W. Va. Code § 29A-5-4(g) (2021); accord W. Va. Code § 60-7-13a(d) (2013) (specifying that West Virginia Code § 29A-5-4 applies to appellate review of a Commissioner's decision).

State Farm argues that OIC erred by concluding it violated West Virginia Code of State Rules § 85-1-10.5.a, as the rule does not require issuance of a final decision within thirty days, but requires "action." First, State Farm asserts that the definitions section of West Virginia Code of State Rules § 85-1-2 defines "act on" to include receiving and processing, requesting additional information, medical review, conducting a potential overpayment analysis, cross-checking with agencies, and other administrative steps that must be taken before ruling. To that end, State Farm next contends that after it received Dr. Perry's report, it promptly acted on it by reviewing the case and conducting a legally required analysis under *Logan-Mingo Area Mental Health, Inc. v. Lester*, 250 W. Va. 219, 902 S.E.2d 768 (2024). Finally, State Farm argues that the Board and OIC erred by failing to explain why the investigative steps it took did not satisfy its obligations under the regulation. We disagree.

West Virginia Code of State Rules § 85-1-10.5.a. provides:

> The responsible party shall act on a permanent disability evaluation report received from a physician to whom the responsible party referred a claimant in a claim for injuries and occupational diseases other than occupational pneumoconiosis within thirty (30) working days of receipt by the responsible party of the report.

West Virginia Code of State Rules § 85-1-2.1 provides:

> "Acted upon" means, but is not limited to, any one of the following: 1) received and processed; 2) contacted a claimant, employer, or medical provider in any fashion requesting more information; 3) reviewed and examined by medical personnel; 4) conducted a potential overpayment analysis; 5) cross-checked with other state agencies for relevant information; and 6) and other similar administrative steps which must be taken before a request can be ruled upon.

Here, the OIC adopted the Board's conclusion that the claim administrator violated the rules by failing to timely act within thirty days on the IME report by Dr. Perry. The Board noted that the claim administrator took nearly five months to issue an order granting the permanent impairment found by Dr. Perry. Based on the Board's findings and conclusions, the OIC concluded that the claim administrator violated the rule and issued a penalty of $1,500.

Upon review, we find that State Farm has not established error in the OIC's order. State Farm failed to establish it acted on Dr. Perry's impairment recommendation within thirty days of receipt of the report. Although State Farm contends that it acted by conducting a nearly five months long investigation regarding apportionment of the PPD award, the record lacks evidence of this contention. As the OIC noted, if we were to accept State Farm's interpretation of the rule, it would render the thirty-day requirement meaningless.

Further, State Farm's reliance on the *Lester* decision is misplaced. Compliance with *Lester* does not require a claim administrator to wait until it receives an IME to review a claim for prior PPD awards that should be deducted from a new award or some factor upon which the PPD award must be apportioned. Even before the claim administrator requested Dr. Perry to perform an IME, it could have investigated issues such as apportionment or deduction of a prior PPD award. For instance, by October 9, 2024, when the claimant received notice that an IME was scheduled, the claim administrator was also on notice to conduct the necessary investigation on issues that could affect the ultimate PPD award. Thus, we do not find State Farm's arguments to be persuasive.

Finally, we find that State Farm did not establish that the OIC committed reversible error pursuant to West Virginia Code § 29A-5-3 (1964). This statute requires that,

> Every final order or decision rendered by any agency in a contested case shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law. Prior to the rendering of any final order or decision, any party may propose findings of fact and conclusions of law. If proposed, all other parties shall be given an opportunity to except to such proposed findings and conclusions, and the final order or decision shall include a ruling on each proposed finding. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings[.]

Id.

In *Modi v. W. Va. Bd. of Med.*, 195 W. Va. 230, 239, 465 S.E.2d 230, 239 (1995), the Supreme Court of Appeals of West Virginia considered the requirements of West Virginia Code § 29A-5-3 and noted that,

> findings of fact made by an administrative agency will not be disturbed on appeal unless such findings are contrary to the evidence or based on a mistake of law. In other words, the findings must be clearly wrong to warrant judicial interference. *Billings v. Civil Service Commission*, 154 W. Va. 688, 178 S.E.2d 801 (1971). Accordingly, absent a mistake of law, findings of fact by an administrative agency supported by substantial evidence should not be disturbed on appeal. *West Virginia Human Rights Commission v. United Transportation Union*, 167 W. Va. 282, 280 S.E.2d 653 (1981); *Bloss & Dillard, Inc. v. West Virginia Human Rights Commission*, 183 W. Va. 702, 398 S.E.2d 528 (1990).

Here, the OIC adopted the Board's detailed report, which set forth findings of fact, applied the governing statutory and regulatory framework, and made a conclusion of law. In its report, the Board also noted and considered the arguments made by both parties. In short, the Board found that the evidence of record demonstrated that the claim administrator failed to act in a prompt and timely manner, and concluded that the claim administrator's failure to timely act violated West Virginia Code of State Rules § 85-1-10.5.a. We find that State Farm has not established that the findings underpinning the OIC's order are contrary to the evidence or based on a mistake of law.

Accordingly, we affirm the OIC's October 10, 2025, order.

Affirmed.

ISSUED: August 27, 2026

CONCURRED IN BY:

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