

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

City of Wheeling,
Employer Below, Petitioner

v.) **No. 26-247** (JCN: 2024012069)
 (ICA No. 25-ICA-338)

Cody Melsop,
Claimant Below, Respondent

MEMORANDUM DECISION

Petitioner City of Wheeling appeals the February 27, 2026, memorandum decision of the Intermediate Court of Appeals (“ICA”). *See City of Wheeling v. Melsop*, No. 25-ICA-338, 2026 WL 668348 (W. Va. Ct. App. Feb. 27, 2026) (memorandum decision). Respondent Cody Melsop filed a timely response.¹ The issue on appeal is whether the ICA erred in affirming the July 21, 2025, order of the Board of Review. In its order, the Board of Review reversed the September 20, 2024, order of the claim administrator, which denied Mr. Melsop’s request for temporary total disability benefits, and the claim administrator’s February 10, 2025, order that denied a request to add right knee medial meniscal tear as a compensable component in the claim. Upon our review, we determine that oral argument is unnecessary and that a memorandum decision affirming the ICA’s decision is appropriate. *See* W. Va. R. App. P. 21.

On appeal, the employer argues that the ICA was clearly wrong in affirming the Board of Review’s finding that the opinion of Darren Frank, M.D., was more credible than that of Jerry Magone, M.D. Although Dr. Frank is the claimant’s treating physician, the employer asserts that Dr. Magone conducted a thorough record review and concluded that the claimant’s meniscal tear was degenerative in nature. Dr. Magone also found that there was no causal relationship between the meniscal tear and the compensable injury. Furthermore, the employer contends that the ICA was clearly wrong in affirming the Board of Review’s decision to award temporary total disability benefits to the claimant based upon a mischaracterization of the evidence. Therefore, the employer argues that the ICA’s memorandum decision should be reversed.

The claimant counters by arguing that the Board of Review and ICA did not err in relying on the opinion of the claimant’s treating physician and surgeon, Dr. Frank, which was found to be reliable with regard to a diagnosis of the claimant’s condition. In contrast, the claimant argues that

¹ The petitioner is represented by counsel Aimee M. Stern, and the respondent is represented by counsel Sandra K. Law.

Dr. Magone never saw, treated, or talked to the claimant. Dr. Magone also did not review the claimant's testimony that he was carrying a tote with supplies weighing at least forty pounds at the time of his injury on December 21, 2023. The claimant further argues that he testified that he did not have a history of prior knee accidents or injuries. As a result, the claimant asserts that the ICA and Board of Review correctly concluded that he sustained a right knee medial meniscal tear in the course of and resulting from his employment, and that he was entitled to temporary total disability benefits. Therefore, the claimant argues that the ICA's memorandum decision should be affirmed.

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: August 25, 2026

CONCURRED IN BY:

Chief Justice C. Haley Bunn
Justice William R. Wooton
Justice Charles S. Trump IV
Justice H. L. Kirkpatrick
Justice James W. Flanigan