

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

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

**Stonerise Healthcare,
Employer Below, Petitioner**

v.) **No. 26-208** (JCN: 2024007242)
 (ICA No. 25-ICA-306)

**Kimberly Dewitt,
Claimant Below, Respondent**

MEMORANDUM DECISION

Petitioner Stonerise Healthcare appeals the February 27, 2026, memorandum decision of the Intermediate Court of Appeals (“ICA”). *See Stonerise Healthcare v. Dewitt*, No. 25-ICA-306, 2026 WL 688312 (W. Va. Ct. App. Feb. 27, 2026) (memorandum decision). Respondent Kimberly Dewitt filed a timely response.¹ The issue on appeal is whether the ICA erred in affirming the Board of Review’s July 24, 2025, order that found the claim administrator’s May 7, 2024, order was unreasonable and granted the claimant’s petition for reasonable attorney’s fees and costs pursuant to West Virginia Code § 23-2C-21(c). 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 while the claim administrator failed to address the claimant’s lower back injury in its May 7, 2024, order, the claimant remained free to seek the addition of the lower back injury as a compensable condition. Because there was no denial of compensability, the employer argues that the claim administrator did not unreasonably deny benefits within the meaning of West Virginia Code § 23-2C-21(c).² The claimant counters by asserting that the claim administrator unreasonably failed to include her lower back sprain in its May 7, 2024, order, as the treating physician included the diagnosis code for a lower back sprain on the occupational injury report. The claimant argues that the employer offered no medical evidence to refute her claim of a compensable lower back sprain. The claimant further asserts that

¹ The employer is represented by counsel Steven K. Wellman and James W. Heslep, and the claimant is represented by counsel William B. Gerwig III.

² West Virginia Code § 23-2C-21(c) defines a denial of benefits as being unreasonable if the claim administrator “is unable to demonstrate that it had evidence or a legal basis supported by legal authority at the time of the denial which is relevant and probative and supports the denial of the award or authorization.”

the Board of Review properly reversed the claim administrator's order to include both her left knee contusion and her lower back sprain as compensable conditions and then properly granted her petition for attorney's fees and costs. In reply, the employer argues that while the claim administrator failed to address the lower back injury in its order, the claim administrator never denied the compensability of the back sprain.

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 22, 2026

CONCURRED IN BY:

Justice William R. Wooton
Justice Charles S. Trump IV
Justice H. L. Kirkpatrick
Justice James W. Flanigan

DISSENTING:

Chief Justice C. Haley Bunn

Bunn, Chief Justice, dissenting:

I dissent to the majority's resolution of this case. I would have set this case for oral argument to thoroughly address the error alleged in this appeal. Having reviewed the parties' briefs and the issues raised therein, I believe a formal opinion of this Court was warranted, not a memorandum decision. Accordingly, I respectfully dissent.