

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

JAMES WOOD,
Claimant Below, Petitioner

v.) No. 26-ICA-74 (JCN: 2025000211)

JANE LEE ENTERPRISES, INC.,
Employer Below, Respondent

FILED
September 25, 2026

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

MEMORANDUM DECISION

Petitioner James Wood appeals the January 28, 2026, order of the Workers' Compensation Board of Review ("Board"). Respondent Jane Lee Enterprises, Inc. ("Jane") filed a response.¹ Mr. Wood did not reply. The issue on appeal is whether the Board erred in affirming the claim administrator's order, which denied the claim on a non-medical basis.

This Court has jurisdiction over this appeal pursuant to West Virginia Code § 51-11-4 (2026). 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.

Mr. Wood filed an Employees' Report of Occupational Pneumoconiosis dated September 17, 2024, alleging that he was a truck driver, was exposed to the hazards of occupational pneumoconiosis ("OP") in West Virginia for thirty-five years, and that he worked for Jane as a truck driver until 2024. An undated Employer's Report of Occupational Pneumoconiosis indicates that Mr. Wood was employed by Jane from May 27, 2014, to March 27, 2020.

On September 18, 2024, Mr. Wood underwent pulmonary function testing, which demonstrated moderate obstruction and a mild reduction of the DLCO. An x-ray performed on September 18, 2024, revealed no parenchymal or pleural abnormalities consistent with pneumoconiosis. A Physicians' Report of Occupational Pneumoconiosis dated October 24, 2024, was completed at New River Health by Richard Spencer, M.D., and indicated that

¹ Mr. Wood is represented by Reginald D. Henry, Esq., and Lori J. Withrow, Esq. Jane is represented by Alysia B. Kozlowski, Esq.

Mr. Wood's capacity for work is impaired by OP. The claim administrator issued an order dated January 8, 2025, rejecting the claim on a non-medical basis. The claim administrator determined that Mr. Wood last worked for Jane in March of 2020, but he reported in his application that his date of last exposure was October of 2024. Mr. Wood protested this order.

Mr. Wood was deposed on August 21, 2025, and he testified that he worked as a coal truck driver for Jane from May 27, 2014, through March 27, 2020. Mr. Wood stated that he worked twelve hours a day, and six days a week for Jane. Mr. Wood testified that his job involved taking loads of coal from different mine sites and delivering the coal to a preparation plant. Mr. Wood further testified that the coal mine roads he travelled were gravel and had coal dust on them, and that he was exposed to abnormal quantities of coal and road dust when he was on coal mine sites. Mr. Wood stated that he would sit in his truck while coal was being loaded and unloaded. Mr. Wood indicated that the truck had air conditioning and heating and that he often drove his truck with the windows up, but he was still exposed to dust. According to Mr. Wood, dust would leak into the truck, and that all trucks have dust leaks.

Mr. Wood stated that the coal mine road he traveled was seven to ten miles long. Mr. Wood stated that it took an hour to travel from the coal mine property to the preparation plant, and that he was exposed to dust when he dumped his load at the preparation plant. Mr. Wood testified that he would normally haul four or five loads of coal every day. Mr. Wood stated that he was exposed to abnormal quantities of road and coal dust when loading coal, travelling on the coal mine site roads, and dumping his load at the preparation plant. Mr. Wood testified that he was exposed to abnormal quantities of dust twelve hours a day for at least sixty consecutive days during his employment with Jane.

Further, according to Mr. Wood, after leaving employment with Jane, he worked for another employer on a less regular schedule in 2022 through 2024. However, Mr. Wood testified that he did not work sixty consecutive days for the subsequent employer. Thus, in a closing argument filed with the Board, Mr. Wood requested that his date of last exposure be amended from October of 2024 to March 27, 2020.

On January 28, 2026, the Board affirmed the claim administrator's order denying the claim on a non-medical basis. The Board found that Mr. Wood failed to establish that he was exposed to abnormal quantities of dust or the hazards of OP for a sufficient amount of time. Mr. Wood 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).

First, Mr. Wood argues that the sole reason given by the claim administrator for the denial of the claim is that Jane was not the proper chargeable employer because Mr. Wood ceased working for that company in 2020, but he noted his date of last exposure was in 2024. Mr. Wood noted that the Board properly found the claim administrator's reasoning was incorrect and that Jane was the proper chargeable employer. The Board changed the date of last exposure to 2020 because Mr. Wood did not work sixty consecutive days with an employer after he left employment with Jane. Thus, Mr. Wood contends that he met his burden of proof that Jane was the proper chargeable employer, and thus, the Board should have either reversed the claim administrator's order or remanded the claim for the claim administrator to address the merits of whether Mr. Wood was exposed to a dust hazard. A remand, Mr. Wood argues, would allow the parties to develop proper evidence regarding that issue. In the alternative, Mr. Wood contends that he established that he was exposed to an abnormal amount of coal dust while driving a coal truck for Jane and that he met the requirements set forth at West Virginia Code § 23-4-1(b) (2024), and, further, that there was no evidence to rebut his record.² We disagree.

² W. Va. Code § 23-4-1(b) provides:

For the purposes of this chapter, the terms "injury" and "personal injury" include occupational pneumoconiosis and any other occupational disease, as hereinafter defined, and workers' compensation benefits shall be paid to the employees of the employers in whose employment the employees have been exposed to the hazards of occupational pneumoconiosis or other occupational disease and have contracted occupational pneumoconiosis or other

The Supreme Court of Appeals of West Virginia (“SCAWV”) held that exposure to the hazards of OP means exposure to “any condition where it can be demonstrated that there are minute particles of dust in abnormal quantities in the work area.” *Fletcher v. W. Va. Office of Ins. Comm’r*, No. 11-0404, 2012 WL 5471438, at *3-4 (W. Va. Oct. 31, 2012) (memorandum decision) (quoting *Meadows v. Workmen’s Comp. Comm’r*, 157 W. Va. 140, 145, 198 S.E.2d 137, 139 (1973)). The SCAWV noted that it had previously “rejected the proposition that a claimant can demonstrate exposure merely by employment at a dusty location, such as a mine site, and . . . that a claimant must demonstrate the presence of a hazard through a showing that ‘minute particles of dust exist in abnormal quantities in the work area.’” *Id.* (quoting *Sluss v. Workers’ Comp. Comm’r*, 174 W. Va. 433, 436, 327 S.E.2d 413, 415 (1985)).

Here, the Board found that Mr. Wood failed to establish that he was exposed to the hazards of OP. The Board noted that Mr. Wood alleges that he was exposed to “abnormal quantities of dust” as a truck driver between 2005 and 2024, but he failed to demonstrate that he was exposed to abnormal quantities of dust. Thus, the Board found Mr. Wood failed to establish that he was exposed to abnormal quantities of minute particles of dust in his work area. The Board further noted that Mr. Wood’s testimony regarding the presence of dust when he loaded coal, travelled on coal mine site roads, and dumped his load at the preparation plant was vague and insufficient to carry his burden of proof regarding harmful dust exposure as required by W. Va. Code § 23-4-1(b).

Upon review, we conclude that the Board was not clearly wrong in finding that Mr. Wood failed to establish that he was exposed to the hazards of OP given that he failed to demonstrate he was exposed to abnormal quantities of dust. As the SCAWV 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

occupational disease, or have suffered a perceptible aggravation of an existing pneumoconiosis or other occupational disease, or to the dependents, if any, of the employees, in case death has ensued, according to the provisions hereinafter made: *Provided*, That compensation is not payable for the disease of occupational pneumoconiosis, or death resulting from the disease, unless the employee has been exposed to the hazards of occupational pneumoconiosis in the State of West Virginia over a continuous period of not less than two years during the 10 years immediately preceding the date of his or her last exposure to such hazards, or for any five of the 15 years immediately preceding the date of his or her last exposure. An application for benefits on account of occupational pneumoconiosis shall set forth the name of the employer or employers and the time worked for each.

S.E.2d 483 (1996). With this deferential standard of review in mind, we cannot conclude that the Board was clearly wrong in affirming the claim administrator's order.

Accordingly, we affirm the Board's January 28, 2026, order.

Affirmed.

ISSUED: September 25, 2026

CONCURRED IN BY:

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