FILED
November 4, 2026
C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Rebecca L. Gonzalez,
Claimant Below, Petitioner

v.) **No. 26-97** (JCN: 2024028639)[1]
(ICA No. 25-ICA-500)

West Virginia Department of
Health & Human Resources[2],
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Rebecca L. Gonzalez appeals the December 29, 2025, order of the Intermediate Court of Appeals ("ICA"), dismissing her appeal for failure to perfect the appeal pursuant to West Virginia Code § 23-5-12a(a). Respondent West Virginia Department of Health & Human Resources ("DHHR") filed a timely response.[3] On appeal to this Court, the petitioner asks us to decide whether the ICA exceeded its procedural authority in dismissing the appeal. We determine that oral argument is unnecessary and that a memorandum decision summarily affirming the dismissal of the petitioner's claims is appropriate. *See* W. Va. R. App. P. 21(c).

The petitioner argues that the failure to file the supporting documents for her appeal was a procedural oversight, and the ICA erred by dismissing the appeal without first providing the petitioner with a Notice of Deficiency and an opportunity to cure, which she claims is the standard practice to ensure due process and an orderly administration of appeals. The petitioner seeks reinstatement of the appeal and an opportunity to provide the omitted materials so that the case may be resolved on the merits. The respondent counters by arguing that the petitioner's appeal was

[1] The Notice of Filing of the appeal submitted by the petitioner lists the Jurisdictional Claim Number as 2024025357, which is incorrect. The correct Claim Number is 2024028639.

[2] Pursuant to West Virginia Code § 5F-2-1a, the agency formerly known as the West Virginia Department of Health and Human Resources was terminated. It is now three separate agencies—the Department of Health Facilities, the Department of Health, and the Department of Human Services. See W. Va. Code § 5F-1-2.

[3] The petitioner is self-represented, and the respondent is represented by counsel Steven K. Wellman and James W. Heslep.

untimely filed with the ICA and asserts that the ICA's order was not an appealable order. The respondent contends that the ICA found that the petitioner failed to file a proper and timely appeal, and the ICA dismissed the petitioner's appeal in an order not subject to appellate review. As such, the respondent argues that this Court lacks jurisdiction to hear the petitioner's appeal.

The merits of the petitioner's appeal are not before this Court, and the only issue for our consideration is whether the petitioner complied with certain procedural requirements in filing her appeal. The Workers' Compensation Board of Review affirmed the rejection of the petitioner's claim by decision dated September 23, 2025. In its decision, the Board of Review stated that "any aggrieved party may file a written appeal within thirty (30) days after receipt of any decision or final action of the Board of Review" and any such appeal "shall be filed with the West Virginia Intermediate Court of Appeals."

The petitioner alleges that she filed a Notice of Appeal on October 22, 2025. However, the petitioner failed to file the necessary documents to perfect her appeal pursuant to Rule 12(c) of the West Virginia Rules of Appellate Procedure.[4] The petitioner alleges that on December 11, 2025, she called the ICA to check on the status of her case, and she was informed that her original filing was deficient. Instead of curing the deficiencies in her filing, the petitioner filed a Motion for Leave to File an Appeal Out of Time with the ICA. In an order dated December 29, 2025, the ICA dismissed the petitioner's appeal from its active docket pursuant to the jurisdictional deadline in West Virginia Code § 23-5-12a(a).[5] In its order, the ICA noted that the petitioner's deadline for filing an appeal was October 23, 2025, and she failed to file a docketing statement, petitioner's

[4] West Virginia Rule of Appellate Procedure 12(c) states that "[a]n appeal from a decision of the Workers' Compensation Board of Review to the Intermediate Court, or an appeal from the Intermediate Court to the Supreme Court is perfected upon the timely and proper filing of a docketing statement, petitioner's brief, and appendix in the Office of the Clerk."

[5] West Virginia Code § 23-5-12a(a) states:

> [a]ny employer, employee, claimant, or dependent who shall feel aggrieved by a decision of the Workers' Compensation Board of Review shall have the right to appeal to the West Virginia Intermediate Court of Appeals, created by §51-11-1 *et seq*. of this code, for a review of such action. The Insurance Commissioner, other private insurance carriers, and self-insured employers, whichever is applicable, shall likewise have the right to appeal to the Intermediate Court of Appeals any final action taken by the Workers' Compensation Board of Review. The aggrieved party shall file a written notice of appeal with the Intermediate Court of Appeals, with a copy to the Workers' Compensation Board of Review, within 30 days after receipt of notice of the action complained of or, in any event, regardless of notice, within 60 days after the date of the action complained of: *Provided*, That unless the notice of appeal is filed within the time specified, no appeal shall be allowed: *Provided, however*, That the time limitation is a condition of the right to appeal and hence jurisdictional.

brief, and appendix by that deadline. Based upon the petitioner's failure to perfect the appeal due to those listed deficiencies, the ICA dismissed the appeal.[6]

This Court applies a de novo standard of review to an order from the ICA granting a motion to dismiss an appeal. Syl. Pt. 1, *Aaron W. v. Evelyn W.*, 251 W. Va. 1, 909 S.E.2d 36 (2024). Upon consideration of the record and briefs, we find no reversible error and therefore summarily affirm the December 29, 2025, order of the ICA dismissing the petitioner's appeal of the Board of Review's order. *See* W. Va. R. App. P. 21(c). We further decline to address the merits of whether the Board of Review erred in rejecting the petitioner's claim below.

Accordingly, we affirm the ICA's decision.

Affirmed.

ISSUED: November 4, 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

[6] On January 15, 2026, the petitioner filed a Motion to Vacate Dismissal and for Reconsideration, attempting to clarify that her previous Motion for Leave to File an Appeal Out of Time was essentially a Motion to Reinstate the Appeal and Grant Leave to Correct Deficiencies. In response to the petitioner's motion, the ICA issued a letter explaining that workers' compensation cases have a sixty-day statutory deadline for filing an appeal. *See supra* note 4. Because the petitioner failed to perfect her appeal by the November 24, 2025, deadline, the ICA had no choice but to dismiss the appeal.