IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

FILED
November 10, 2026
ASHLEY N. DEEM, CHIEF DEPUTY CLERK
INTERMEDIATE COURT OF APPEALS
OF WEST VIRGINIA

JONATHAN DAY,
Claimant Below, Petitioner

v.) No. 26-ICA-102 (JCN: 2024012781)

BLACKHAWK MINING, LLC,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Jonathan Day appeals the February 13, 2026, order of the Workers' Compensation Board of Review ("Board"), which reversed the decision of the claim administrator and granted Mr. Day a 6% permanent partial disability ("PPD") award related to his compensable left leg injury. Respondent Blackhawk Mining LLC ("Blackhawk") filed a timely response.[1] Mr. Day filed a reply.

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.

On January 17, 2024, Mr. Day presented to the emergency room at Beckley ARH complaining of significant left calf pain following a work injury where his left leg was pinned by a buggy. Mr. Day was unable to ambulate after the injury. His physical examination revealed swelling in the left calf. Mr. Day could flex and extend his left foot with pain and tolerated passive flexion and extension of the left foot. A CT scan of his left lower extremity revealed a significant hematoma. Mr. Day was assessed with a lower extremity injury.

John M. Tabit, D.O., noted on January 17, 2024, that Mr. Day's left leg became trapped between a scoop and another object while working in the coal mines. Mr. Day complained of intense pain in his left lower extremity and mild paresthesia over the dorsum of the left foot. X-rays revealed no evidence of fracture, while lab work showed rhabdomyolysis. Mr. Day was admitted to the hospital for further evaluation and

[1] Mr. Day is represented by Robert F. Vaughan, Esq. Blackhawk is represented by Sean Harter, Esq.

monitoring. Dr. Tabit assessed Mr. Day with a hematoma of the left lower leg. Due to concerns of possible evolving compartment syndrome, Dr. Tabit recommended evacuation of the left lower extremity hematoma and fasciotomies.

Thereafter, on January 17, 2024, David L. Stuart, M.D., performed the following operative procedures on Mr. Day: 1) evacuation of a large left lower extremity hematoma; 2) repair of the muscle laceration; and 3) fasciotomy of anterior and lateral compartments of left leg. A surgical exploration revealed a laceration of the left anterior tibialis muscle and a large hematoma of the left anterior and lateral compartments.

On January 17, 2024, Mr. Day submitted a claim for workers' compensation benefits related to a work-related left leg injury he sustained on January 16, 2024. The physician's portion of the claim indicated that Mr. Day had sustained an occupational crush injury to his left leg, and the claim administrator held his claim compensable for a crush injury to his left lower extremity.

On February 21, 2024, Mr. Day was seen by Dr. Tabit for a follow-up appointment regarding his left lower extremity injury. Mr. Day had started physical therapy but continued to complain of bee sting sensations in his left leg and foot. Dr. Tabit's physical examination revealed reduced range of motion and strength in Mr. Day's left ankle with mild paresthesia. The assessment was status post evacuation of hematoma. Dr. Tabit ordered an AFO brace for Mr. Day's left lower extremity due to left foot drop and recommended continued physical therapy. Dr. Tabit documented that Mr. Day was unable to return to work until a re-evaluation at a follow-up appointment scheduled in four to six weeks.

Progress notes from A Place to Heal Fitness and Physical Therapy dated April 16, 2024, states that Mr. Day received physical therapy secondary to a contusion for his work related left lower leg injury since January 23, 2024, and had made progress with standing tolerance, range of motion, and strength. The notes revealed that Mr. Day was now walking without assistive devices but continued to have a significant limp. Mr. Day was fitted for a shoe/AFO brace for his left foot to assist with gait sequencing, and it was noted that he had been wearing the AFO brace off and on. The therapist recommended that Mr. Day continue physical therapy.

On August 15, 2024, Mr. Day underwent a functional capacity evaluation ("FCE"). The therapist found that Mr. Day was functioning at the sedentary part-time physical demand level on a limited basis; his manual material handling abilities were limited by pain, and he had significant physical limitations with both material and non-material handling. The validity criteria showed that Mr. Day gave a valid effort during the evaluation. The therapist concluded that unless additional treatment improved his symptoms, Mr. Day would have difficulty maintaining employment.

On September 6, 2024, Prasadarao B. Mukkamala, M.D., performed an independent medical evaluation ("IME") of Mr. Day. Mr. Day complained of cramping in his left leg, balance issues, and Dr. Mukkamala noted that Mr. Day's treatment included surgical repair of a muscle laceration of the tibialis anterior, surgical evacuation of a large left lower extremity hematoma, fasciotomy of the anterior and lateral compartments of the left leg, physical therapy, and work conditioning. Dr. Mukkamala's physical examination of Mr. Day revealed range of motion limitations in the left ankle, but otherwise, normal range of motion in all other joints in the left lower extremity. Mr. Day's motor examination revealed grade four muscle strength for the left ankle dorsiflexors, and no other motor abnormalities. Also, Mr. Day's sensory examination was normal except for some increased sensitivity at the scar on the lateral aspect of the left leg. He was able to ambulate independently, but walked with a limp on the left side. Although Mr. Day used a cane during the evaluation, Dr. Mukkamala noted that he was able to walk without the cane.

Dr. Mukkamala found Mr. Day to be at maximum medical improvement ("MMI"), and he evaluated Mr. Day's whole person impairment using the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, (4th ed. 1993) ("AMA *Guides*"). Dr. Mukkamala found Mr. Day to have 3% whole person impairment for range of motion deficits in the left ankle and 1% whole person impairment for range of motion deficits in the left hindfoot.

Additionally, Dr. Mukkamala found Mr. Day to have 5% whole person impairment for weakness of the left lower extremity ankle dorsiflexors with a muscle strength grade of 4. Because the AMA Guides required that only one method (range of motion or muscle weakness) be used to rate Mr. Day's impairment, Dr. Mukkamala recommended 5% whole person impairment for lower extremity muscle weakness. On September 24, 2024, the claim administrator granted Mr. Day a 5% PPD award based upon Dr. Mukkamala's medical report.

On January 8, 2025, an EMG was performed on Mr. Day's left lower extremity by Michael Kominsky, D.C. Dr. Kominsky found that the EMG was essentially a normal test, as there was no evidence of a peripheral nerve lesion or a polyneuropathy of the nerves tested in the lower extremities. However, Dr. Kominsky noted an isolated finding of denervation potential of the left lateral gastrocnemius musculature and indicated it would be consistent with a crush injury and subsequent surgery to that area.

On January 23, 2025, Mr. Day was seen by Dr. Tabit for a follow-up of his recent EMG study. Dr. Tabit reported that Mr. Day was ambulatory with a single prong cane. Dr. Tabit informed Mr. Day that the recent EMG results correlated with his reports of decreased sensation in the left lower extremity and advised Mr. Day that these issues may or may not improve over time. Dr. Tabit discussed the possibility of complex regional pain syndrome ("CRPS") with Mr. Day, although he did not believe Mr. Day had CRPS.

On February 25, 2025, Syam B. Stoll, M.D., M.P.H., performed an IME of Mr. Day. Dr. Stoll's physical examination revealed the following: 1) range of motion loss in the left ankle, left hindfoot, and left knee; 2) sensory impairment in the saphenous nerve, the left lateral sural cutaneous nerve/sural nerve, the superficial peroneal nerve, the deep peroneal nerve, the medial plantar nerve, and the lateral plantar nerve; and 3) motor nerve impairment in the common peroneal nerve, the medial plantar nerve, and the lateral plantar nerve. Mr. Day told Dr. Stoll that he could not walk without a cane. Using the AMA Guides, Dr. Stoll rated Mr. Day's whole person impairment. He found Mr. Day to have a total of 29% whole person impairment for left lower extremity CPRS. This rating consisted of 8% whole person impairment for range of motion loss in the left knee, ankle, and foot; 11% whole person impairment for left lower extremity sensory loss; and 13% whole person impairment for left lower extremity motor loss. Dr. Stoll also found Mr. Day to have 30% whole person impairment for gait derangement using Table 36 on page 76 of the AMA Guides. Noting that the AMA Guides only permitted the use of one method in evaluating lower extremity impairment, Dr. Stoll found Mr. Day to have 30% whole person impairment for gait derangement.

Dr. Stoll also reviewed and commented upon Dr. Mukkamala's impairment findings. In that regard, Dr. Stoll disagreed with Dr. Mukkamala's impairment findings for the following reasons: 1) Dr. Mukkamala's physical exam findings were not consistent with his own physical exam findings; and 2) Dr. Mukkamala failed to acknowledge Mr. Day's left lower extremity CRPS diagnosis in his impairment rating.

On September 6, 2025, Austin Nabet, D.O., performed an IME of Mr. Day. Dr. Nabet reported that Mr. Day used a cane to ambulate, but noted that he was able to ambulate without the cane using a slow, antalgic gait. Dr. Nabet found Mr. Day to be at MMI, and he evaluated Mr. Day's impairment using the AMA Guides. He found Mr. Day to have 6% whole person impairment for motor weakness and sensory deficits in the left lower extremity.

Dr. Nabet also reviewed and commented upon Dr. Stoll's impairment findings. Dr. Nabet opined that Dr. Stoll had erred by basing his impairment assessment on gait derangement. On that point, Dr. Nabet noted that the AMA Guides indicate that gait derangement should not be used to evaluate impairment if there are other appropriate methods available. In this case, Dr. Nabet noted that there were other appropriate methods to rate Mr. Day's lower extremity impairment under the AMA Guides. Additionally, Dr. Nabet disagreed with Dr. Stoll's impairment rating because he felt that Mr. Day did not meet the diagnostic criteria for CRPS, as he felt that Mr. Day's sensory complaints were related to lateral compartment syndrome and the subsequent fasciotomies. Further, Nabet said that he did not find the significant range of motion limitations at the knee, ankle, or foot reported by Dr. Stoll, and he believed Dr. Stoll's range of motion measurements were invalid. Dr. Nabet noted that the operative report documented a transection of the tibialis anterior with attempted primary repair and explained that this was important because the

tibialis anterior is the principal muscle for dorsiflexion. Thus, Dr. Nabet opined that the surgery explained Mr. Day's objective dorsiflexion weakness. Dr. Nabet concluded that the anterior compartment muscle dysfunction and the documented tibialis anterior injury were the primary drivers of Mr. Day's ongoing whole person impairment.

On September 16, 2025, Merge Investigations, Inc. composed a surveillance report from video surveillance footage of Mr. Day on September 1, 2025, September 4, 2025, and September 6, 2025 performing the following the activities: walking with a slight limp in and out of a garage without the use of an assistive device; walking with a slight limp across his yard without the use of an assistive device; climbing in and out of an ATV without any assistive devices; bending at the waist; crouching down; standing on one leg and leaning forward; bending over to pick up a dog; standing and holding a dog leash with a small to medium sized dog attached to it; exiting a truck and walking across his lawn using a cane; and using a cane to walk into an appointment at Body Works.

On November 24, 2025, Dr. Mukkamala supplemented his report after he was provided with additional medical records and the employer asked him to offer an opinion on the new medical evidence. Dr. Mukkamala opined the following: 1) Mr. Day had no objective clinical evidence of CRPS, and his sensory complaints were clearly explained by the compensable injury; 2) Mr. Day had no objective clinical evidence of foot drop; 3) Mr. Day sustained some muscle damage, but there was no evidence of rhabdomyolysis; and 4) the 30% whole person impairment rating recommended by Dr. Stoll for gait derangement was erroneous and not supported by the medical evidence.

On December 12, 2025, the claim administrator denied a request from Mr. Day's counsel to add the following diagnoses to the claim: 1) CRPS of the left lower extremity; 2) traumatic compartment syndrome of the left lower extremity; 3) foot drop in the left lower extremity; 4) other abnormalities of gait and mobility; 5) hematoma in the left lower extremity; and 6) rhabdomyolysis.

On February 13, 2026, the Board reversed the claim administrator's September 24, 2024, order and granted Mr. Day an additional 1% PPD for a total of 6% PPD. It is from this order that Mr. Day now appeals.

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).

On appeal, Mr. Day argues that the Board clearly erred in its determination that Dr. Stoll's medical evaluation was less reliable than the others of record. In support of his argument, Mr. Day contends that the Board improperly relied on the impairment opinions of Dr. Mukkamala and Dr. Nabet because their assessments focused solely on localized deficits. Mr. Day argues that a diagnosis of CRPS is not required to evaluate impairment based on gait derangement, and that Dr. Stoll, who was the only physician to conduct a proper evaluation pursuant to the AMA Guides, properly based his assessment on gait derangement. We disagree.

This Court "will not reverse a finding of fact made by the Workmen's Compensation Appeal Board unless it appears from the proof upon which the appeal board acted that the finding is plainly wrong." *Plummer v. Worker's Com. Div.*, 209 W. Va. 710, 712, 551 S.E.2d 46, 48 (2001) (citing Syl. Pt., *Rushman v. Lewis*, 173 W. Va. 149, 313 S.E.2d 426 (1984)). Further, the plainly wrong standard "presumes an administrative tribunal's actions are valid as long as the decision is supported by substantial evidence." *Duff v. Kanawha Cnty. Comm'n*, 247 W. Va. 550, 555, 882 S.E.2d 916, 921 (Ct. App. 2022), *rev'd on other grounds*, 250 W. Va. 510, 905 S.E.2d 528 (2024).

West Virginia Code of State Rules § 85-20-66.1 states that,

> [t]he evidentiary weight to be given to a report will be determined by how well it demonstrates that the evaluation and examination that it memorializes were conducted in accordance with the applicable Guides and that the opinion with regard to the degree of permanent whole body medical impairment suffered by an injured worker was arrived at and composed in accordance with the requirements of the applicable Guides.

As the Board found in the present matter, Dr. Stoll did not explain why he utilized the gait derangement method instead of one of the more specific methods for evaluating lower extremity impairments as instructed by the AMA *Guides*. The mere existence of an abnormal gait does not establish that the gait-derangement method is the most appropriate basis for assessing whole-person impairment. The evaluator must account for the

applicable rating criteria and explain why the selected method appropriately reflects the claimant's impairment. In that regard, the Board noted that Dr. Mukkamala and Dr. Nabet followed the AMA *Guides*, whereas Dr. Stoll's recommendation of a 30% whole person impairment for gait derangement was not supported by the weight of the evidence. The evidence indicates Mr. Day has a limp and sometimes uses a cane to ambulate. However, we find no reversible error in the Board's determination that Dr. Stoll's recommendation of 30% impairment for gait derangement is not supported by adequate reasoning and the evidence of record.

Additionally, the Board explained that Dr. Stoll was also the only medical provider or evaluator to find range of motion deficits in Mr. Day's left knee and to recommend impairment for a diagnosis of CRPS, which was not a compensable condition in the claim, and that no other medical evaluator or provider diagnosed Mr. Day with CRPS. Thus, we discern no reversible error in the Board's conclusion that because Dr. Mukkamala's and Dr. Nabet's IMEs were of equal evidentiary weight, Mr. Day was entitled to a 6% PPD award.

As the Supreme Court of Appeals of West Virginia 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 S.E.2d 483 (1996). With this deferential standard of review in mind, we cannot conclude that the decision of the Board was in clear violation of any constitutional or statutory provision, nor is it clearly the result of erroneous conclusions of law, nor is it based upon a material misstatement or mischaracterization of the evidentiary record.

Accordingly, we affirm the Board's February 13, 2026, order.

Affirmed.

ISSUED: November 10, 2026

CONCURRED IN BY:

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