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

ROYAL PROPERTY MANAGEMENT, INC.,
Employer Below, Petitioner

v.) No. 26-ICA-15 (JCN: 2024004686)

LARA THORNSBURY, DEPENDENT OF MICHAEL THORNSBURY II, (DECEASED),
Claimant Below, Respondent

and

RPM FACILITY SERVICES, LLC,
Employer Below, Respondent

and

WEST VIRGINIA OFFICES OF THE INSURANCE COMMISSIONER, in its Official Capacity as Administrator of the Old Fund,
Respondent Below, Respondent

MEMORANDUM DECISION

Petitioner Royal Property Management, Inc., ("Royal") appeals the December 12, 2025, order of the Workers' Compensation Board of Review ("Board"). Respondents Lara Thornsbury and RPM Facility Services, LLC ("RPM") filed individual responses. Respondent West Virginia Offices of the Insurance Commissioner, in its Official Capacity as Administrator if the Old Fund ("WVOIC") did not file a response.[1] Royal filed a reply. The issue on appeal is whether the Board erred in affirming the claim administrator's order, which found that Royal is the chargeable employer.[2]

[1] Royal is represented by Jeffrey M. Carder, Esq. Ms. Thornsbury is represented by Edwin H. Pancake, Esq. RPM is represented by Steven K. Wellman, Esq., and James W. Heslep, Esq. WVOIC did not appear.

[2] We acknowledge that the names of the entities in this claim are confusing and at times seem to be used interchangeably. It is often unclear which entity is being referred to

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. Thornsbury's death certificate, dated July 17, 2023, indicates that he died on July 11, 2023, and that the cause of death was electrocution. Ms. Thornsbury filed an application for fatal dependents' benefits dated July 20, 2023, indicating that she is the dependent widow of the deceased injured worker, Michael Thornsbury II. Ms. Thornsbury asserted that Mr. Thornsbury was electrocuted on July 11, 2023, while installing lighting at work while employed by Royal, and that Mr. Thornsbury has two dependent children.

On September 11, 2023, Travelers Insurance Indemnity Company of America ("Travelers") sent a letter to Ms. Thornsbury, indicating that the decedent was employed by RPM on July 11, 2023. Travelers averred that no coverage was in place for RPM on July 11, 2023. On September 18, 2023, Ms. Thornsbury filed an application for fatal dependents' benefits with the West Virginia Uninsured Employer Fund indicating that the decedent died while working for RPM on July 11, 2023. Under the section "Identity of Employer," Ms. Thornsbury indicated RPM also owned or operated a business named Royal Property Management, Inc.

A letter from the WVOIC found that, although Ms. Thornsbury provided a pay remittance that identified the decedent's employer on the date of his death as RPM, evidence indicates that the actual employer was Royal. In a letter dated December 6, 2023, counsel for Travelers, Royal's workers' compensation insurer, told the WVOIC that Travelers disagreed with the WVOIC's finding that Royal was the proper chargeable employer in the claim. Counsel indicated that Travelers would issue an order denying the application for fatal dependents' benefits on the basis that Mr. Thornsbury was not an employee of Royal. On December 22, 2023, the claim administrator/Travelers issued an order rejecting the claim on the basis that the decedent was not employed by Royal. Ms. Thornsbury protested this order. During the litigation of this protest, at Royal's request, the Board issued an order dated February 22, 2024, adding RPM as a potentially chargeable employer in the protest and adding the WVOIC Uninsured Employer Fund as a potential party.

In support of its argument that the decedent was not employed by Royal at the time of his death, it submitted multiple documents listing RPM as a legal entity and documents

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in employee/witness statements. In the Board's order Royal Property Management, Inc., was not abbreviated, and RPM Facility Services, LLC, was abbreviated as RPMFS.

listing RPM as the decedent's employer. Mr. Thornsbury became employed after he responded to a job posting by RPM for a commercial electrician. A Bureau for Child Support Income Withholding for Support notice dated August 10, 2023, identified RPM as the decedent's employer. An ISO ClaimSearch report on "RPM Facility" indicates that RPM was insured by State Farm in 2021 and 2022.

On July 11, 2023, the St. Albans Police Department responded to a call at an address in St. Albans, West Virginia, in reference to a male who had been electrocuted. The call was placed by a co-worker who stated that he and the decedent were recently hired employees of RPM. The co-worker further identified Jeff Roy as the owner of the company. Another employee, who identified himself as an employee of RPM, arrived on the scene and was interviewed. This employee stated that he met the decedent and the co-worker at the location earlier that morning to prepare a list of the work to be done. The employee stated that RPM had a contract with the owners of the building to perform maintenance, and that he interviewed Mr. Thornsbury and his co-worker for the jobs the day before, and the owner of the company hired both men. RPM was cited for working without a proper permit or license. RPM also received a U.S. Department of Labor OSHA Citation and Notification of Penalty dated November 3, 2023, and was fined.

Ms. Thornsbury and RPM submitted multiple documents indicating that Royal was the decedent's employer at the time of his death. A W-2 Wage and Tax Statement for 2023 indicates that the decedent received $144.00 in wages from Royal in 2023. A pay stub dated July 21, 2023, establishes that Royal paid wages to the decedent for work performed between the pay period of July 9, 2023, to July 15, 2023. West Virginia Secretary of State Business Organization information for Royal indicates that "Royal Property Management, Inc." filed to become a legal business entity on August 20, 2013. Jeffrey Roy was identified as the incorporator and president of Royal. West Virginia Secretary of State Business Organization information for RPM indicates that "RPM Facility Services, LLC" filed to become a legal business entity on September 5, 2023, and identifies Royal as the Member.

On April 25, 2024, Royal responded to Ms. Thornsbury's request for admission, interrogatories, and requests for production of documents in a civil action filed in Kanawha County Circuit Court. Included in the response are the following statements: "Michael Thornsbury and [his co-worker] were working at the subject property on behalf of Royal Property Management. They were to replace light bulbs in a certain area of the property, as well as to clean up the area where they were assigned to work."

Mr. Roy was deposed on November 12, 2024, in the civil action, and he testified that Royal was incorporated in 2013 to manage properties and real estate, but it did not conduct any business until 2017 or 2018. Mr. Roy stated that in 2017 or 2018, Royal began providing the same facility maintenance services previously performed by his former business, Environmental Management. Mr. Roy testified that Mr. Thornsbury was an

employee of Royal and the work he was doing on the date of his death was being done on behalf of Royal. Mr. Roy further testified that he established RPM after the decedent's death, and that RPM did not perform any work in July 2023 at the facility where the accident occurred.

On December 6, 2024, RPM responded to Ms. Thornsbury's requests for admissions, interrogatories and requests for production of documents in the same civil action. In its responses, RPM admitted that it did not employ the decedent to perform work at the subject property on July 11, 2023. RPM further admitted that OSHA incorrectly identified it as Mr. Thornsbury's employer. RPM indicated that Royal hired Mr. Thornsbury and another worker to perform work on July 11, 2023, and the OSHA investigation and resulting citations were related to work performed by or on behalf of Royal. RPM noted that a 2023 W-2 Wage and Tax Statement indicates that the decedent was employed by Royal.

Mr. Roy signed an affidavit dated October 9, 2025, indicating that he is the owner and president of Royal, which is the sole member of RPM, a limited liability company organized in West Virginia. Mr. Roy stated that, on July 11, 2023, an accident occurred involving the decedent while he was performing work for Royal. Mr. Roy alleges that RPM did not exist on July 11, 2023, and it was not formed or recognized by the West Virginia Secretary of State until September 5, 2023. Mr. Roy stated that, at the time of the accident, RPM had no employees, no payroll account, no contracts, and had conducted no business operations. Mr. Roy alleged that all employees performing work on July 11, 2023, including the decedent and the other worker on the site, were employees of Royal, and their supervision, payroll, and employment relationship were exclusively under Royal. Mr. Roy noted that the decedent's W-2 tax form and unemployment filings with WorkForce West Virginia were issued under Royal.

Mr. Roy stated that the workers' compensation and general liability policies in effect on July 11, 2023, were held by Royal with Travelers Insurance, and coverage for the incident in question was provided and paid under that policy. Further, Mr. Roy stated that no separate policy existed for RPM at that time. Mr. Roy alleged that any reference to "RPM Facility Services" on online job postings or Paychex payroll stubs was the result of internal shorthand for "Royal Property Management, Inc.," but that these administrative mistakes do not reflect a separate employing entity or payroll source. Mr. Roy stated that RPM did not maintain its own payroll account, bank account, or independent operations on July 11, 2023. Mr. Roy alleged that any reference to RPM as the responsible employer or insured entity is inaccurate, and the proper employer and insured party under the Travelers Insurance policy in effect at the time of the incident was, and remains, Royal.

On December 12, 2025, the Board reversed the claim administrator's order rejecting the claim. The Board found that Mr. Thornsbury died in the course of and resulting from

his employment with Royal. Further, the Board found that the evidence establishes that Royal, rather than RPM, is the chargeable employer. Royal 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:
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> (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).

Royal argues that the evidence indicates that Mr. Thornsbury was employed by RPM at the time of his death. Royal further argues that Mr. Roy's statements are only an attempt to avoid the consequences of operating a business without workers' compensation insurance. We disagree.

Here, the Board found that the weight of the evidence established that Mr. Thornsbury was employed by Royal on the date of his death. Thus, the Board found that Royal is the chargeable employer in this claim. The Board noted that Royal had workers' compensation insurance coverage with Travelers Insurance on the date of Mr. Thornsbury's accident, while RPM did not have workers' compensation insurance on the date of the accident. The Board noted that Mr. Roy testified that he sometimes used the names Royal and RPM interchangeably; however, RPM had no employees, no payroll account, no contracts, and had conducted no business operations at the time of Mr. Thornsbury's death. The Board further noted that Mr. Roy said that Mr. Thornsbury was employed by and performing work on behalf of Royal at the time of his death. The Board found that Mr. Roy's testimony was credible and corroborated by many documents. Further, the Board noted that several different company names, including RPM, RPM Facility Services, and RPMFS have been used to refer to Royal Property Management, Inc.

at various times and in various documents. The Board also noted that the West Virginia Secretary of State Business Organization records show that RPM did not become a legal business entity until September 5, 2023.

We find no merit in Royal's arguments. We note that the evidence indicates that the only business operating as a legal entity at the time of Mr. Thornsbury's death was Royal. Further, we note that Mr. Roy, the owner of both businesses, consistently stated that Mr. Thornsbury was employed by Royal at the time of his death and that RPM did not exist as a legal entity or have employees until after Mr. Thornsbury's death. Mr. Roy explained that he used Royal and RPM interchangeably when discussing his businesses even before RPM was a legal entity. While Mr. Roy's statements may be an attempt to avoid the consequences of operating a business without workers' compensation insurance, we note that there is no evidence of his motives other than these allegations.

Thus, upon review, we conclude that the Board was not clearly wrong in finding that Royal is the chargeable employer in this claim. 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 Board was clearly wrong in affirming the claim administrator's order.

Accordingly, we affirm the Board's December 12, 2025, order.

Affirmed.

ISSUED: November 10, 2026

CONCURRED IN BY:

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