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

JERID MASSEY,
Claimant Below, Petitioner

v.) No. 26-ICA-180 (JCN: 2025014023)

BAYSTAR COAL COMPANY, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Jerid Massey appeals the March 31, 2026, order of the Workers' Compensation Board of Review ("Board"). Respondent Baystar Coal Company, Inc., ("Baystar") filed a response.[1] Mr. Massey did not reply. The issue on appeal is whether the Board erred in affirming the claim administrator's order, which rejected the claim.

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. Massey submitted an Employees' and Physicians' Report of Injury dated May 7, 2025, alleging that he sustained a lower back injury while lifting a belt structure on May 6, 2025. The physician's portion of the application was completed by personnel at Welch Community Hospital on May 22, 2025, and indicates that Mr. Massey sustained an occupational injury to the lower back while lifting a belt structure. The diagnosis was low back pain. The provider indicated that this was not an aggravation of a prior injury.

Prior to the injury at issue in this claim, Mr. Massey suffered compensable occupational low back injuries in 2018 and 2024. Mr. Massey injured his back on September 20, 2018, while pulling a fire hose. The claim administrator issued an order dated October 4, 2018, holding the injury compensable for upper, middle, and lower back pain. Mr. Massey also injured his back on June 25, 2024, when he lifted an electric cable. On July 16, 2024, the claim administrator issued an order holding the claim compensable for a lumbar sprain. Mr. Massey received a 3% permanent partial disability award for the

[1] Mr. Massey is represented by Reginald D. Henry, Esq., and Lori J. Withrow, Esq. Baystar is represented by H. Dill Battle III, Esq.

June 25, 2024, injury. The diagnoses related to Mr. Massey's prior injuries include low back pain, hip pain, lumbar sprain, bulging disc at L5-SI, radiculopathy, lumbago, sprain of ligaments of the lumbar spine, and muscle spasm. Mr. Massey consistently complained of low back pain radiating into the right lower extremity following his prior injuries. The last treatment note before the alleged injury in this claim was on December 16, 2024, when Mr. Massey was seen by Jeffrey Prichard, physician's assistant. On that date, Mr. Massey was complaining of low back pain with radicular symptoms into the right hip. A physical examination revealed lumbar tenderness, spasms, and reduced ranges of motion. Mr. Massey was diagnosed with a lumbar sprain and an L5-S1 disc bulge.

Returning to this injury at issue in this claim, Mr. Massey was seen at Welch Community Hospital Urgent Care several times between May 22, 2025, and June 12, 2025. On May 22, 2025, Mr. Massey was seen for a follow-up of his lifting injury, and he reported that his back pain was getting worse with standing and walking, with numbness and tingling. It was noted that Mr. Massey had a prior history of bulging discs. The assessment was low back pain and muscle spasm. On May 29, 2025, Mr. Massey indicated that his symptoms were unchanged. Mr. Massey's prior history of chronic back and neck pain was noted by the provider. On June 5, 2025, Mr. Massey reported that, following his 2025 injury, he is unable to lift, carry or ambulate for prolonged periods, and was not improving. Mr. Massey was instructed to remain off work until he received an MRI or new consult. On June 12, 2025, Mr. Massey indicated he has pain with prolonged standing and sitting. On all visits, the assessment was back pain.

On June 25, 2025, Mr. Massey was seen by Evan Muscari, D.O., for a review of his labs. Mr. Massey reported worsening symptoms in his neck and back. The assessment was cervical radiculopathy and lumbosacral radiculopathy.

Mr. Massey was deposed on September 18, 2025, and he testified that he was injured on May 6, 2025, when he lifted a one-hundred-pound piece of belt structure. Mr. Massey stated that his back went out as soon as he went to pick it up and he described the pain as "like someone stabbed him with a sword through the bottom of his back." Mr. Massey further stated that he had extreme pain in his lower back and could not stand up straight or pick up anything. Mr. Massey testified that he called the mine superintendent and reported the injury as soon as he was outside the mine. Mr. Massey stated that he went to the Welch Emergency Room and the provider recommended that he stay off work until the issue resolved. Mr. Massey stated that he did not have any problems with his back in the weeks leading up to the injury. Mr. Massey described his current symptoms as a sharp pain in his back when he tries to stand up, and when sitting in a chair he has a sharp pain that runs down his right leg from the right buttock all the way down to the right pinkie toe. As to his previous symptoms, Mr. Massey testified that, prior to the May 6, 2025, injury, he had experienced pain radiating down his right leg, but it was not the same as following the injury. Mr. Massey stated that the pain was now constant. Mr. Massey stated that he

had a prior compensable back injury from lifting a high voltage cable in June of 2024. Mr. Massey indicated that he was awarded 3% permanent partial disability for the June 2024 injury. Mr. Massey stated that he also injured his lower back on September 20, 2018, however he indicated that it was only a pulled muscle and not a serious injury.

On March 31, 2026, the Board affirmed the claim administrator's orders, which rejected the claim. The Board found that Mr. Massey failed to establish that he suffered a discrete new injury rather than an aggravation of prior injuries. Mr. Massey 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).

Mr. Massey argues that the evidence establishes that he sustained a back injury in the course of and resulting from his employment on May 6, 2025, when he was lifting belt and felt a sudden severe stabbing pain in his lower back. Mr. Massey further argues that he testified that he was not having back symptoms in the weeks leading up to the injury at hand. Mr. Massey also argues that he described an isolated fortuitous incident on May 6, 2025, where he was heavy lifting and felt an immediate stabbing pain in his back that radiated down to his toes. Finally, Mr. Massey argues that he was able to perform his job duties leading up to this incident; however, following the injury he was unable to even lift a shovel and was taken off work by medical providers. Mr. Massey specifically states that he does not dispute that he is not entitled to the presumption under *Moore v. ICG Tygart Valley, LLC,* 247 W. Va. 292, 879 S.E.2d 779 (2022).

Three elements must coexist in workers' compensation cases to establish compensability: (1) a personal injury (2) received in the course of employment and (3) resulting from that employment. *Barnett v. State Workmen's Comp. Comm'r*, 153 W. Va. 796, 172 S.E.2d 698, syl. pt 1 (1970); *Sansom v. Workers' Comp. Comm'r*, 176 W. Va. 545, 346 S.E.2d 63, syl. pt. 1 (1986).

The Supreme Court of Appeals of West Virginia ("SCAWV") held, in *Gill v. City of Charleston*, 236 W. Va. 737, 783 S.E.2d 857 (2016):

> A noncompensable preexisting injury may not be added as a compensable component of a claim for workers' compensation medical benefits merely because it may have been aggravated by a compensable injury. To the extent that the aggravation of a noncompensable preexisting injury results in a [discrete] new injury, that new injury may be found compensable.

Id. at 738, 783 S.E.2d at 858, syl. pt. 3.

Here, the Board analyzed the claim under *Gill* and determined that the medical evidence established that Mr. Massey was suffering from his preexisting ongoing low back issues rather than a discrete new injury. The Board noted that Mr. Massey had consistently complained of low back pain radiating into his right lower extremity since his previous low back injuries. Further, the Board noted that Mr. Massey was previously diagnosed with, and received treatment for, low back pain, lumbago and lumbosacral radiculopathy. Finally, the Board noted that Mr. Massey had received treatment for the same symptoms as recently as five months prior to the injury at issue in this claim.

Upon review, we conclude that the Board was not clearly wrong when it found that Mr. Massey failed to establish that he suffered a discrete new injury on May 6, 2025. The medical evidence documents that Mr. Massey had low back pain before the alleged injury in this claim through December of 2024. Moreover, Mr. Massey's medical records after May 6, 2025, do not provide a diagnosis commensurate with an acute injury. His diagnoses were either low back pain or lumbar radiculopathy, both conditions Mr. Massey had before the alleged injury in this case.

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 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 rejecting the claim.

Accordingly, we affirm the Board's March 31, 2026, order.

Affirmed.

ISSUED: November 10, 2026

CONCURRED IN BY:

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