

CIPRIANI & WERNER
A T T O R N E Y S A T L A W

CASE SUMMARIES

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In *Dorsey v. Blackhawk Mining, LLC*, No. 24-ICA-254 (W. Va. Int. Ct. App. May 22, 2025), the Intermediate Court of Appeals squarely addressed the onset or “date of disability” in an occupational pneumoconiosis permanent partial disability claim, holding that the legally operative onset date is the date of the Occupational Pneumoconiosis Board’s findings, not an earlier date suggested by medical evidence or claimant allegations. The claimant argued that his disability began earlier, pointing to a September 2022 medical report that allegedly identified pulmonary impairment due to OP. However, the ICA rejected that position, explaining that prior to the OP Board’s findings, any alleged impairment is not legally established, even if supported by earlier medical opinions. The Court emphasized that, under the statutory framework, the OP Board is the exclusive factfinder on pulmonary impairment in OP claims, and until it issues its findings, the existence and degree of impairment remain undetermined as a matter of law. Relying on *Burgess* and statutory construction principles, the Court reasoned that disability in OP claims does not “exist in legal effect” until the factfinder resolves the issue. Accordingly, the ICA held that the date of disability is the date the OP Board issues its findings, because that is the point at which impairment is definitively established and no longer in dispute. The Court rejected both the claim administrator’s position that the onset date was the date of the award order and the claimant’s argument for an earlier medical onset date. Bottom line: *Dorsey* is a key onset-date case establishing that (1) in OP claims, disability does not legally exist until the OP Board issues its findings, (2) earlier medical evidence does not establish onset for benefit purposes, and (3) the controlling onset date for PPD benefits is the OP Board findings date, not the date of diagnosis, symptoms, or application.

In *Altivia Services, LLC v. Boster*, No. 25-ICA-206 (W. Va. Int. Ct. App. Feb. 3, 2026), the Intermediate Court of Appeals affirmed the Board of Review's determination that Altivia was the chargeable employer in an occupational hearing loss claim involving multiple employers. The employer argued that subsequent employment constituted a later hazardous exposure sufficient to shift liability. The ICA rejected that argument and deferred to the Board's factual findings, emphasizing that the "last exposure" rule controls unless credible evidence establishes a later qualifying hazardous exposure. The Court reiterated that liability is not apportioned among employers and that the Board's credibility determinations are entitled to substantial deference. This decision underscores that employers must present concrete, credible exposure evidence, not merely proof of continued employment in the industry, to avoid liability.

In *Perrine v. West Virginia Department of Health and Human Resources*, No. 25-ICA-232 (W. Va. Int. Ct. App. Feb. 3, 2026), the Intermediate Court reversed the Board of Review and found the claim compensable. The claimant, a nurse, slipped and fell in a parking lot while exiting her vehicle during a break. The Board had denied the claim under the coming-and-going rule and increased risk analysis. The ICA held that the Board was clearly wrong, finding that the injury occurred within the “zone of employment” and on the employer’s premises, thereby satisfying compensability requirements. The Court distinguished between neutral risks and injuries caused by an actual fall on the employer’s premises, relying on *Williby* and related precedent. This case reinforces that premises-based falls, even during breaks, are frequently deemed compensable, and it narrows the effectiveness of traditional coming-and-going defenses in similar factual scenarios.

In *Murray v. Yost*, No. 25-ICA-1 (W. Va. Int. Ct. App. June 27, 2025), the Intermediate Court affirmed a 33% permanent partial disability award where the employer sought to apportion impairment to preexisting degenerative conditions. The Court held that the employer failed to meet its burden under W. Va. Code § 23-4-9b because it did not establish a definitely ascertainable preexisting impairment or quantify the degree of impairment attributable to that condition. The ICA emphasized that imaging findings alone are insufficient to support apportionment absent functional impairment evidence. This decision is significant in reinforcing the evidentiary burden required for apportionment and provides a strong basis to challenge attempts to reduce awards based solely on degenerative findings without corresponding functional limitations.

In *Terry Smallwood v. Brooks Run South Mining, LLC*, No. 25-ICA-225 (W. Va. Int. Ct. App. 2026), the Intermediate Court of Appeals reversed and remanded a Board of Review decision involving the extent of compensability and/or benefits flowing from a mining-related injury. The underlying dispute centered on conflicting medical evidence regarding the nature and severity of the claimant's condition and whether the requested benefits or conditions were properly attributable to the compensable injury. The Board adopted one medical opinion as more persuasive but failed to meaningfully address competing reports that directly contradicted that conclusion. On appeal, the ICA emphasized that while the Board is the ultimate factfinder, its discretion is not unbounded. The Court held that the Board must do more than simply state that one opinion is "more credible"; it must articulate a reasoned explanation for rejecting contrary, probative evidence, particularly where that evidence addresses the same diagnostic or impairment issues. The ICA found that the Board's failure to reconcile these conflicts rendered its findings insufficient under W. Va. Code § 23-5-12a because the decision lacked a demonstrable evidentiary pathway. The case was remanded for further analysis and findings. From a legal standpoint, *Smallwood* reinforces that selective reliance on a single medical report, without addressing competing evidence, constitutes reversible error. Practically, it provides a strong basis to argue that the Board cannot ignore unfavorable medical evidence and must explain its reasoning in a way that permits appellate review.

In *Randolph County Emergency Squad v. Carlucci*, No. 25-ICA-308 (W. Va. Int. Ct. App. 2026), the ICA issued a mixed decision, affirming in part and reversing in part, in a case involving compensability and the scope of the claim, including what conditions and benefits were properly included within the compensable injury. The factual record included competing theories as to whether the claimant's condition arose from a discrete workplace injury versus preexisting or unrelated conditions, as well as disputes over the extent of treatment and benefits authorized. The Board of Review resolved these issues in favor of the claimant, but the ICA determined that the Board had improperly conflated distinct legal inquiries. Specifically, the Court distinguished between (1) the threshold issue of compensability and (2) the subsequent question of the scope of compensable conditions and treatment. The ICA held that even where an injury is compensable, the Board must separately analyze whether additional diagnoses or treatments are causally related to the compensable injury, applying the correct statutory standards to each inquiry. The Court affirmed those portions of the decision supported by substantial evidence but reversed where the Board failed to apply the proper causation analysis or extended compensability beyond what the evidentiary record supported. Legally, *Carlucci* is important because it reinforces that compensability is not an open-ended concept and that each additional condition or benefit must independently satisfy causation requirements. For defense purposes, it is a useful case to argue against "scope creep" where claimants attempt to expand claims beyond the original compensable injury.

In *SGS North America v. Vandall*, No. 25-ICA-266 (W. Va. Int. Ct. App. 2026), the ICA vacated the Board of Review's decision and remanded the claim due to an inadequately developed evidentiary record and insufficient factual findings. The case involved disputes over the nature of the claimant's condition and entitlement to benefits, with the Board rendering a decision based on a limited or incomplete medical record. The ICA found that critical factual determinations had been made without sufficient evidentiary support and that the Board failed to address gaps in the record that were essential to resolving the claim. The Court emphasized that findings must be supported by "reliable, probative, and substantial evidence," and that where the record is incomplete or ambiguous on material issues, the Board has an obligation to ensure adequate development before issuing a final decision. The ICA rejected the notion that it could affirm based on speculation or inferred findings, instead requiring a clear evidentiary basis for each material conclusion. As a result, the case was remanded for further evidentiary development and proper findings. From a legal perspective, *Vandall* underscores that a deficient record itself can constitute reversible error and that the Board cannot fill evidentiary gaps with assumptions. For defense strategy, it provides strong support for challenging awards where the medical or factual record is underdeveloped, inconsistent, or lacks objective support.

In *Blackhawk Mining, LLC v. Elswick*, No. 25-735 (W. Va. Mar. 24, 2026), the Supreme Court of Appeals affirmed a Board of Review decision increasing the claimant's permanent partial disability award from 9% to 13%, rejecting the employer's argument that the Board relied on a flawed medical opinion that improperly apportioned impairment between compensable and preexisting conditions. The Court emphasized that the Board is the ultimate factfinder and is entitled to weigh competing medical evidence, and it declined to disturb the Board's selection of an impairment rating even where the employer identified analytical weaknesses in the physician's methodology. The Court reiterated that reversal would require impermissibly reweighing the evidence, reinforcing that impairment determinations are highly deferential on appeal.

In *ACNR Resources, Inc. v. Miller*, No. 25-662 (W. Va. Feb. 13, 2026), the Supreme Court of Appeals affirmed a Board of Review decision increasing an occupational hearing loss award from 2.4% to 8.25%, holding that both impairment calculations and allocation of liability under W. Va. Code § 23-4-6b(g) are largely discretionary and fact-driven. The employer challenged the methodology used to calculate impairment and the failure to allocate liability among multiple employers, but the Court deferred to the Board's findings, emphasizing that such determinations will not be disturbed absent clear error. The decision underscores the significant deference afforded in occupational disease and hearing loss claims, particularly with respect to impairment ratings and allocation decisions.

In *Harper v. City of Elkins*, No. 25-733 (W. Va. Mar. 24, 2026), the Supreme Court of Appeals affirmed the denial of compensability, holding that the Board of Review's finding that the claimant did not sustain an injury in the course of and resulting from employment was not clearly wrong. The Court reiterated that compensability determinations are inherently fact-driven and that where the evidentiary record supports competing inferences, appellate courts must defer to the Board's resolution of those facts. The decision reinforces that compensability denials will be upheld so long as they are supported by substantial evidence.

In *Georgian American Alloys, Inc. v. Davis*, No. 25-579 (W. Va. Jan. 13, 2026), the Supreme Court of Appeals affirmed a Board of Review decision adopting a higher permanent partial disability rating than that granted by the claim administrator, rejecting the employer's argument that the Board improperly relied on a less credible medical opinion. The Court emphasized that it will not reweigh competing medical evidence and that the Board's credibility determinations are entitled to substantial deference so long as they are supported by the record. The case reflects the Court's continued reluctance to disturb impairment determinations on appeal.

In *Murray American Energy, Inc. v. Yost*, No. 25-577 (W. Va. Jan. 13, 2026), the Supreme Court of Appeals affirmed a Board of Review decision declining to apportion impairment to preexisting degenerative conditions, holding that the employer failed to meet its burden of proving a definitely ascertainable preexisting impairment and the degree to which that condition contributed to the claimant's overall impairment. The Court reiterated that apportionment requires more than diagnostic or radiographic evidence and must be supported by functional impairment evidence, and it deferred to the Board's determination that such proof was lacking.

In *Terry Kyle v. Patriot Coal Corporation*, No. 25-605 (W. Va. Jan. 13, 2026), the Supreme Court of Appeals affirmed a decision awarding 0% permanent partial disability for occupational pneumoconiosis (OP), holding that the claimant failed to demonstrate that the Occupational Pneumoconiosis Board was clearly wrong in its findings. The claimant alleged respiratory impairment due to long-term coal dust exposure, and although one pulmonary function study showed 10% impairment, a later study showed 0% impairment. The OP Board testified that pulmonary function results can fluctuate and that the most reliable indicator is the study with the “best volumes,” which in this case was the later study reflecting no impairment. The Board also found no supporting x-ray evidence of OP. Relying on this testimony, the Board of Review affirmed the 0% award, and both the ICA and Supreme Court upheld that determination. On appeal, the claimant argued that the evidence was in equipoise and that he should receive the benefit of the doubt under W. Va. Code § 23-4-1g. The Court rejected that argument, finding the evidence was not equally balanced because the OP Board explicitly determined which study was more reliable. The Court emphasized that under W. Va. Code § 23-4-6a, OP Board findings must be affirmed unless clearly wrong, and it deferred to the Board’s expertise in evaluating pulmonary testing. Bottom line: the decision reinforces that (1) the OP Board’s selection of the “best” pulmonary study controls, (2) fluctuating test results do not create equipoise if the Board explains its reasoning, and (3) absent clear error, courts will defer to the OP Board on impairment determinations in OP claims.

In *Tammie Adams, dependent of Kenneth Adams (deceased) v. Greyhead Mining Co., Inc., et al.*, No. 25-573 (W. Va. Jan. 13, 2026), the Supreme Court of Appeals affirmed the denial of death benefits for occupational pneumoconiosis (OP), holding that the claimant failed to establish that OP materially contributed to the decedent's death. The decedent had a history of coal mine employment and alleged dust exposure, but the Occupational Pneumoconiosis Board consistently found that he did not suffer from OP and that his pulmonary impairment was instead attributable to non-occupational causes, including a prior motor vehicle accident and idiopathic pulmonary fibrosis. Although the claimant relied on treating physicians who opined that OP contributed to the decedent's cardiac and pulmonary conditions, the OP Board rejected those opinions and concluded that the radiographic findings were more consistent with a non-occupational disease process that developed decades after coal mine employment ended. On appeal, the claimant argued that the OP Board improperly disregarded favorable medical opinions and that the evidence established OP as a material contributing factor in the decedent's death. The Court rejected those arguments, emphasizing that under W. Va. Code § 23-4-6a, the OP Board's findings are entitled to substantial deference unless clearly wrong. Applying the standard articulated in *Duff*, the Court found that the claimant failed to demonstrate clear error in the OP Board's conclusions. The Court further reinforced that it will not reweigh conflicting medical evidence or substitute its judgment for that of the OP Board where the record contains reliable evidence supporting its findings. The decision underscores that (1) a claimant must prove OP actually existed and materially contributed to death, (2) treating physician opinions will not control where the OP Board finds otherwise, and (3) death benefit claims fail where the evidence supports a non-occupational etiology, particularly when disease onset occurs long after coal mine exposure ended.

In *Billy Johnson v. Blackhawk Mining*, Nos. 24-516 and 24-517 (W. Va. Feb. 18, 2026), the Supreme Court of Appeals affirmed the denial of additional compensable conditions, temporary total disability (TTD) benefits, and reopening, holding that the claimant failed to establish a causal connection between his alleged additional injuries and the workplace incident and failed to prove disability due to the compensable injury. The claim was held compensable only for a lumbar sprain, and the Court found no error in rejecting the addition of a cervical condition because the contemporaneous medical records consistently documented only a low back injury and repeatedly noted no neck pain, while the only medical opinion on causation limited the injury to the lumbar spine. The claimant's subjective complaints and later allegations were insufficient to establish causation without supporting medical evidence. The Court also affirmed the denial of TTD benefits, emphasizing that the claimant was released to return to work the day of the injury, testified he was ready, willing, and able to work, and was subsequently terminated for reasons unrelated to the injury. The Court found no medical evidence establishing that the claimant's inability to work was caused by the compensable condition. Finally, the Court affirmed the denial of reopening, noting that the claimant failed to present evidence of aggravation, progression, or new facts as required by statute and failed to include the reopening request in the record, precluding meaningful review. Bottom line: the decision reinforces that (1) compensability is limited to conditions supported by objective medical evidence of causation, (2) TTD requires proof that inability to work is caused by the compensable injury, not termination or other factors, and (3) reopening requires specific new evidence of progression or aggravation.

QUESTIONS?

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