

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Wilburn T. Preece, Jr.
Claimant Below, Petitioner

v.) **No. 24-266** (JCN: 2022017976)
(ICA No. 23-ICA-446)

Kermit Volunteer Fire Department,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Wilburn T. Preece Jr. appeals the March 25, 2024, memorandum decision of the Intermediate Court of Appeals of West Virginia (“ICA”). *See Preece v. Kermit Volunteer Fire Dep’t*, No. 23-ICA-446, 2024 WL 1281190 (W. Va. Ct. App. Mar. 25, 2024) (memorandum decision). Respondent Kermit Volunteer Fire Department filed a response.¹ The issue on appeal is whether the ICA erred in affirming the September 11, 2023, decision of the West Virginia Workers’ Compensation Board of Review, which denied the claim.

The claimant argues that the ICA was clearly wrong in finding that the report of Joseph Touma, M.D., was insufficient to establish that his occupation, as the fire chief, caused additional hearing loss. The claimant asserts that Dr. Touma’s report is the only credible medical evidence of record concerning whether he has additional noise induced impairment as a result of his work. As such, the claimant believes that Dr. Touma’s recommended impairment award of 23% should have been granted by the ICA. The employer counters by arguing that Dr. Touma did not consider the claimant’s nonoccupational factors that could contribute to hearing loss. Because the Board of Review found that Dr. Touma’s report was unpersuasive on the basis that he failed to consider whether the claimant’s progressive hearing loss was due to causes other than occupational noise exposure, the employer contends that the ICA correctly affirmed the Board of Review’s order.

This Court reviews questions of law de novo, while we accord deference to the Board of Review’s findings of fact unless the findings are clearly wrong. Syl. Pt. 3, *Duff v. Kanawha Cnty. Comm’n*, 250 W. Va. 510, 905 S.E.2d 528 (2024). Upon consideration of the record and briefs, we find no reversible error and therefore summarily affirm. *See* W. Va. R. App. P. 21(c).

¹ The claimant is represented by counsel Donald C. Wandling, and the employer is represented by counsel Jeffrey M. Carder.

Affirmed.

ISSUED: January 14, 2025

CONCURRED IN BY:

Chief Justice William R. Wooton
Justice Elizabeth D. Walker
Justice Tim Armstead
Justice C. Haley Bunn
Justice Charles S. Trump IV