

West Virginia Appellate Reorganization Act of 2021

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encova
INSURANCE

- ❖ Effective July 1, 2022, the Workers Compensation Office of Judges was replaced by the Board of Review (“BOR”), which is now the court of original jurisdiction for workers’ compensation claims.
- ❖ The BOR has five members, and each member hears all the objections in any case assigned to him/her throughout the life of the case or the member’s term on the BOR.
- ❖ Each member has a hearing examiner specifically assigned to him/her to assist in the conduct of the litigation.
 - If a hearing examiner is assigned to review an objection, the hearing examiner submits the designated record at the end of the review process to the assigned BOR member, along with the hearing examiner’s recommendation of a decision.
 - Any order or decision must be signed by the BOR member assigned to the objection.

- ❖ Appeals from the BOR now go to the Intermediate Court of Appeals (“ICA”).
- ❖ The ICA is a court of general jurisdiction, meaning it has jurisdiction over many areas of the law, not just workers compensation.
- ❖ Consists of three judges appointed by Governor Jim Justice. After the initial term is over, the judges will be elected and serve a 10-year term.
 - Initial appointments expire at the end of 2024, 2026, and 2028, respectively.
- ❖ No new evidence or testimony.
- ❖ No filing fee for workers’ compensation cases.

❖ The ICA may affirm, reverse, modify, or supplement the decision of the BOR. It may also remand the case for further proceedings.

❖ BOR's decision will be reversed, vacated, or modified if findings are:

- In violation of statutory provisions;
- In excess of the statutory authority or jurisdiction of the BOR;
- Made upon unlawful procedures;
- Affected by other error of law;
- Clearly wrong in view of the reliable, probative, and substantial evidence on the whole record; or
- Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

- ❖ Written opinions, orders, or decisions from the ICA are binding precedent unless overruled or modified on appeal.
- ❖ Appeals from the ICA will go to the WV Supreme Court of Appeals.
- ❖ Appeals to the Supreme Court are discretionary, meaning the Court can refuse to hear the appeal.

❖ Notable ICA decisions:

○ COVID:

- *PrimeCare Medical of WV, Inc. v. Brittany Foster* – Vacated and remanded BOR decision for a detailed analysis of the six factors for a compensable occupational disease.
- *Vaughn Hutchison v. Raytheon Corp.* – Affirmed BOR decision rejecting claim.

○ Apportionment of Preexisting Conditions:

- *Duff v. Kanawha County Commission* – Affirmed BOR decision and found apportionment is appropriate even without quantifiable information so long as there is a reasonable basis for apportionment based on other competent evidence.