



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

COBIN SUNDERMAN

v.

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

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EHB Docket No. 2025-030-CS

Issued: February 27, 2026

**OPINION AND ORDER ON
APPELLANT’S MOTION FOR SUMMARY JUDGMENT**

By Sarah L. Clark, Judge

Synopsis

The Board denies Appellant’s Motion for Summary Judgment where there are genuine issues of material fact in dispute and where the Appellant’s Motion fails to comply with the Board’s Rules of Practice and Procedure.

OPINION

Background

The current appeal arises from the Department’s denial of a Mine Subsidence Insurance (“MSI”) claim filed by the Appellant, Cobin Sunderman. Mr. Sunderman owns the property at 121 Gardenia Drive, Turtle Creek, PA 15145 (“Property”), which contains a house, concrete driveway, concrete stairs, front and rear patios, and a yard. The Property has been covered by an MSI policy through the Mine Subsidence Insurance Fund since May 19, 2004. The Department administers the MSI program on behalf of the Mine Subsidence Insurance Fund under 52 P.S. § 3222. On March 14, 2025, the Appellant filed a claim the Department for damages that occurred to the house, exterior stairs, and yard. The Department conducted a site visit on April 10, 2025, and concluded that the claimed damages were not caused by mine subsidence. The Department

notified Mr. Sunderman of its determination by letter dated April 16, 2025. Proceeding *pro se*, Mr. Sunderman filed a Notice of Appeal challenging the Department’s determination on May 9, 2025. On December 4, 2025, Mr. Sunderman filed a Motion for Summary Judgment (“Motion”). The Department filed its Response in Opposition to Appellant’s Motion for Summary Judgment (“Response”) on January 5, 2026. The Appellant did not file a Reply to the Department’s Response.

Standard

Summary judgment may be granted only when the record – including pleadings, depositions, answers to interrogatories, and other related documents – shows that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Pa.R.Civ. P. 1035.1- 1035.2; *Beech Mountain Lakes Ass’n v. DEP*, 2023 EHB 221, 223. The party who brought the motion has the burden of proving that no genuine issue of fact exists. *Shoats v. Commr., Pennsylvania Dept. of Corrections*, 591 A.2d 326, 330 (Pa. Cmwlth. 1991). The Board views the summary judgment record in the light most favorable to the non-moving party, and all doubts as to whether genuine issues of material fact remain must be resolved against the moving party. *Eighty-Four Mining Co. v. DEP*, 2019 EHB 585, 587; *Stedje v. DEP*, 2015 EHB 31, 33. Issues that involve mixed questions of fact and law should be decided at a full hearing and are typically not appropriate for summary judgment. *Ctr. for Coalfield Justice v. DEP*, 2016 EHB 341, 347. “A motion for summary judgment is not the appropriate place for [the Board] to make decisions regarding the quality of evidence when [it has] not yet heard testimony.” *Diehl v. DEP*, 2018 EHB 18, 28. Summary judgment is granted only where the right to such a judgment is clear and free from doubt, *Toy v. Metro. Life Ins. Co.*, 928 A.2d 186, 195 (Pa. 2007); *Sierra Club v.*

DEP, 2023 EHB 97, 99; *Pileggi v. DEP*, 2023 EHB 288, 291, and only in the “clearest of cases.” *Eighty Four Mining Company*, 2019 EHB at 587.

Discussion

By his Motion, Mr. Sunderman essentially argues that the damage to his property could only have been caused by mine subsidence for which his property is, and has been, covered by an applicable MSI policy, and therefore that the Department erred when it concluded that the damage was not caused by mine subsidence and denied Mr. Sunderman’s MSI claim. He states that he submitted his Notice of Appeal because of:

factual errors, incorrect characterizations of mine subsidence and unsubstantiated representations in the Memo that lead the Appellee to their erroneous conclusion and subsequent denial of Appellant’s MSI claim. The Memo contains information that is speculative and not based on factual information gathered by the Subsidence Investigator (Stacey Malarkey).

Motion at 3. While Mr. Sunderman does not specifically argue that there are no genuine issues of material fact and that he is entitled to judgment as a matter of law, it is clear from his Motion that he believes his facts are accurate and that he has the evidence to support those facts, despite not filing that evidence concurrently with his Motion as is required by the Board’s Rules of Practice and Procedure. The Department, of course, disagrees with the facts as presented by Mr. Sunderman, and argues that summary judgment should be denied in this matter because 1) there are genuine issues of material fact inappropriate for summary judgment; and 2) Mr. Sunderman’s Motion does not comport with the Board’s Rules of Practice and Procedure regarding summary judgment motions.

Issues of Material Fact

In a section of his Motion entitled “Statement of the Claim,” Mr. Sunderman states the following:

1. The Parties agree that the subject Property has been damaged and is covered by MSI.
2. Mine subsidence has disturbed the ground within the footprint of the Property, resulting in damage to the Appellant's land, improvements and structures as shown in the court record.
3. The subsidence is directly over the Pittsburgh Coal Company Oak Hill Mine No. 2 and is discernible over the ground surface and in damage to bordering structures as characteristic trough-like substance.
4. The present and future Property damage caused by the mine subsidence is covered by the MSI Insuring agreement.

Appellant's Motion at 4. By its Response documents, the Department addresses each of these claims in turn. The Department admits that the structure, sidewalk, and steps within the Property are damaged and that the Property is covered by an active MSI policy, but denies that there is damage to the land surface or that the above-described damages were caused by mine subsidence. Department's Responses to Appellant's Statement of Facts at 1.¹ The Department further outright denies Mr. Sunderman's second and fourth claims, which are predicated on mine subsidence having conclusively caused the claimed damage to the Property. Responses to Facts at 2. While the Department admits that the Property is located above the Oak Hill Mine No. 2 in response to Mr. Sunderman's third claim, it denies that mine subsidence caused any of the claimed damage to the Property. Responses to Facts at 2.

Mr. Sunderman's Motion continues similarly, the majority of pages devoted to a section entitled "Facts Presented in the Court Record," which consists of twelve numbered paragraphs, each containing functionally unsupported recitations of the Appellant's version of the facts. In its Response and attendant documents, the Department counters Mr. Sunderman's account of the facts

¹ Mr. Sunderman did not file a separate, numbered statement of undisputed material facts in compliance with 25 Pa. Code § 1021.94a(d), but the Response documents filed by the Department include a separate, numbered statement of its responses to the facts contained within the Appellant's Motion.

with its own version, and, as required by the Board’s Rule on Summary Judgment Motions, supports its contentions with documentary evidence.

Though Mr. Sunderman’s Motion includes a variety of citations to what he describes as the “court record,” the documents to which he cites were not included with his filing, and, while the Department did point out this failure in its Response, Mr. Sunderman chose not to file a Reply addressing this failure, or indeed any of the Department’s contentions.² However, even if Mr. Sunderman had attached exhibits in support of his Motion and/or filed a Reply, it is highly unlikely that doing so would have changed the outcome here as summary judgment may only be granted when the right to such judgment is definitive and free from doubt. Just about the only thing that is clear here is that at least one vital issue of genuine fact remains in dispute: whether mine subsidence caused the claimed damage to Mr. Sunderman’s property, making this appeal unquestionably inappropriate for disposition at summary judgment.

Failure to Follow Board Procedural Rules

Mr. Sunderman’s failure to file specific supporting evidence concurrently with his Motion is unfortunately one of several procedural fumbles made in the filing of that Motion. As the Department argues in its Response, the Appellant’s Motion violates the Board’s Rules because it is not accompanied by a statement of undisputed material facts, a supporting brief, or the aforementioned evidentiary materials relied upon, all of which are required to be filed with any motion for summary judgment. 25 Pa. Code § 1021.94a(b)(1).

The Board’s Rules of Practice and Procedure, found at Chapter 1021 of Title 25 of the Pennsylvania Code, are regulations with the force of law and there are consequences for not

² On Friday, December 5, 2025, in response to an email from Mr. Sunderman notifying the Board that his Motion had been filed, Board staff explained via email both his entitlement to file a Reply and the deadline by which he must do so.

following them. This is not to be punitive, rather, the Board's Rules of Practice and Procedure must be followed by all appellants – represented or proceeding *pro se* – to ensure fair procedure to *all* parties appearing before us, which requires that the Judges have all the necessary information to make a fair and reasonable ruling in accordance with the law. Doing so is not possible when one party fails to present the evidence or legal argument(s) on which they rely. The Board's Rules contain specific requirements regarding what must be produced and how and when it shall be presented so that every party appearing before us is given notice of the expectations and requirements of putting on a case, from the filing of the appeal to the issuance of an Adjudication, and sometimes beyond. This can be an arduous process, as most legal proceedings are, but when all parties follow the Rules of Practice and Procedure, no party should be surprised by evidence or legal argument, and every party has the opportunity to make reasoned arguments and support them with specific and available evidence. The Board then must weigh the evidence and consider the legal claims, finally ruling in accordance with law, based on the record presented. This cannot be achieved if the record is not presented and legal arguments are not made in an orderly and accessible manner.

It appears that Mr. Sunderman, who has chosen to represent himself, may lack clarity on the standard and requirements for summary judgment. This is understandable as Mr. Sunderman is not an attorney; however, it does not excuse him from complying with the Board's Rules. While we often opine that *pro se* parties are given no special consideration, we do tend to afford some leniency or benefit of the doubt toward *pro se* parties where the issue is formalistic rather than functional, and where doing so does not prejudice any other parties or interfere with the Board's ability to discharge our duties. *Perrin v. DEP*, 2008 EHB 78, 82.

For example, Mr. Sunderman made several discovery related filings to the docket, in derogation of 25 Pa. Code § 1021.102(b), which states: “[c]opies of requests for discovery or responses to requests are not to be filed with the Board unless they are necessary for the resolution of a discovery dispute or disposition of a motion pending before the Board.” The Presiding Judge did not require the removal of these documents as the Department, to whom they should have been exclusively directed, could easily access them and did not request their removal from the public docket. Where *pro se* filings are concerned, to the extent that doing so does not cause prejudice, we attempt to divine and rule based on the substance of the filing, even when the form is not perfect. See *Eachus v. DEP*, EHB Docket No. 2025-131-L (Opinion and Order on Motion to Dismiss issued (February 11, 2026)). Although the Board does technically have access to Mr. Sunderman’s discovery requests and responses via the docket, we do not have access to any of the Department’s discovery requests and responses – absent those filed by the Department concurrently with its Response – upon which Mr. Sunderman relies in his Motion. Further, it is not for the Board to comb through a party’s entire library of discovery; it is the party’s responsibility to attach only what evidence is relied upon in a motion. So, while Mr. Sunderman’s filing of his discovery requests and responses to the docket was incorrect, leniency was appropriate as no party was prejudiced, and requiring their removal, once filed, could have eliminated the Department’s access to those documents or otherwise caused confusion or delay.

This leniency, however, does not and cannot extend to ignoring violations of the Rules, particularly when, as here, they limit both the opposing party’s ability to effectively respond and the Board’s ability to effectively analyze the claims. Further, while individuals have a constitutional right to proceed on their own behalf, without representation, we have often cautioned *pro se* appellants that choosing to do so does not exempt them from following the Rules that govern

practice and procedure before this Board. *Perrin*, 2008 EHB at 81.; *Kleissler v. DEP*, 2002 EHB 737, 739. Even the United States Supreme Court has answered the question of whether a *pro se* party is required to follow the same rules as represented parties with a resounding yes: “The right of self-representation is not a license...not to comply with relevant rules of procedure and substantive law.” *Faretta v. California*, 422 U.S. 806, 834 n. 6 (1975).

We understand that the Board’s Rules of Practice and Procedure are not the most captivating reading, and, particularly for those without a legal education, they may present a challenge. This is why we have developed our Practice and Procedure Manual, found on our website in PDF form, which tracks the Rules of Practice and Procedure and includes short explanations of how the Board interprets and applies these Rules, as well as examples from appeals and further citations to additional applicable Opinions and Adjudications. The citations can be looked up in Opinion and Adjudication Volumes, also found on our website in PDF form. We have also promulgated a Rule on citations, found at 25 Pa. Code § 1021.5, which is helpful for those who have not been trained in how to read or write them. Additionally, although it is always highly recommended that appellants retain competent and experienced legal counsel, we have produced a Citizen’s Guide to Practice and Procedure Before the Board specifically for unrepresented appellants, also available on our website in PDF form. Our website also provides an Opinion Search feature, wherein anyone can search for motions for summary judgment to use as examples when drafting their own. In addition to these written resources, parties may reach out to Board staff with questions regarding procedure, and in many cases, including this one, are invited to do so in initial conference calls held on or around the 120-day mark from the filing of the notice of appeal.

As such, it is reasonable that Mr. Sunderman could be confused about the purpose of filing a summary judgment motion and the requirements for doing so, this confusion cannot be said to be based on an obscurity of process or a lack of resources detailing the proper procedure. Though this misunderstanding is, fortunately for Mr. Sunderman, not fatal to his appeal, it is fatal to the success of his Motion. As we have said before, self-representation can be akin to performing surgery on one's own self, a situation best avoided and instead left to the professionals. *Perrin*, 2008 EHB at 81. To the extent that this appeal continues to a hearing on the merits, we would strongly suggest that Mr. Sunderman expediently obtain counsel, or, at a minimum, deeply familiarize himself with the above-mentioned resources and ensure that all future filings and actions comport with the Board's Rules.

Conclusion

At the heart of this matter lies the question of whether the claimed damages to the Property were caused by mine subsidence or not. Mr. Sunderman says yes; the Department says no. At the summary judgment stage, the burden of proving that no genuine issue of material fact exists lies with the moving party. Likewise, this stage in the proceedings requires that all doubts as to whether genuine issues of material fact remain must be resolved against the moving party. Therefore, Mr. Sunderman bears the burden of proving that no genuine issues of material fact remain, and, to the extent there are doubts as to whether there are genuine material facts in issue, those doubts must be resolved against Mr. Sunderman. As elucidated above, there are no doubts here. Rather than showing that no genuine issues of fact remain, Mr. Sunderman's Motion indeed highlights that this matter is almost entirely composed of material facts in dispute and is thus absolutely inappropriate for disposition at summary judgment. Whereas Mr. Sunderman's Motion is procedurally flawed to near-fatality, following the Board's regulatory requirements for summary

judgment motions would not have made a difference in this outcome as Mr. Sunderman relies heavily on his expert's report to support his assertions, the credibility of whom and which – along with any expert(s) the Department puts forth – must be determined by the Presiding Judge following cross-examination at a hearing on the merits.

For these reasons we deny Mr. Sunderman's Motion for Summary Judgment and issue the following Order.



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ORDER

AND NOW, this 27th day of February, 2026, it is hereby **ordered** that the Appellant’s Motion for Summary Judgment is **denied**.

ENVIRONMENTAL HEARING BOARD

s/ Sarah L. Clark

SARAH L. CLARK
Judge

DATED: February 27, 2025

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