

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Danielle M. Dexter,
Claimant Below, Petitioner

vs.) **No. 22-0029** (BOR Appeal No. 2056871)
(JCN: 2020010495)

Kanawha County Board of Education,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Danielle M. Dexter appeals the decision of the West Virginia Workers' Compensation Board of Review ("Board of Review"). Respondent Kanawha County Board of Education filed a timely response.¹ The issue on appeal is the claims administrator's rejection of the claim, which was affirmed by the Workers' Compensation Office of Judges ("Office of Judges") and then by the Board of Review on December 17, 2021. This Court may not reweigh the evidentiary record, but must give deference to the findings, reasoning, and conclusions of the Board of Review, and when the Board's decision affirms prior rulings by both the Workers' Compensation Commission and the Office of Judges, we may reverse or modify that decision only if it is in clear violation of constitutional or statutory provisions, is clearly the result of erroneous conclusions of law, or is based upon a material misstatement or mischaracterization of the evidentiary record. *See* W. Va. Code § 23-5-15(c) & (d). We apply a de novo standard of review to questions of law. *See Justice v. W. Va. Off. Ins. Comm'n*, 230 W. Va. 80, 83, 736 S.E.2d 80, 83 (2012). Upon our review, we determine that oral argument is unnecessary and that a memorandum decision affirming the Board of Review's decision is appropriate. *See* W. Va. R. App. P. 21.

Ms. Dexter, a high school teacher at Herbert Hoover High School, alleges that she developed a respiratory disorder as a result of exposure to mold in her classroom. In September 2019, Ms. Dexter presented to Cabin Creek Clinic for wheezing, difficulty breathing, a sore throat, and sinus pressure for several weeks and reported that mold was found in her classroom. She was diagnosed with acute bronchitis and acute sinusitis. A month later, Ms. Dexter sought treatment from Mohammad Yousaf, PA-C, who noted that she was having difficulty breathing and was using her inhaler more frequently. Ms. Dexter reported that black mold was recently found in her classroom due to a pipe which had been leaking for two years. PA-C Yousaf diagnosed allergic rhinitis, asthmatic bronchitis, coughing, wheezing, exposure to mold, and insomnia.

¹Petitioner, Danielle M. Dexter, is represented by Patrick K. Maroney, and respondent, Kanawha County Board of Education, is represented by Charity K. Lawrence.

Pinnacle Consultants conducted a mold assessment of Ms. Dexter's classroom in September 2019. The October 2, 2019, report indicated elevated mold and recommended a full cleaning of the classroom as well as retesting. The report noted that there are no numerical standards for mold exposure because exposure affects people differently based on their immunologic susceptibility. Further, there is limited data concerning the relationship between the amount of mold exposure and reactions. Ms. Dexter's classroom was cleaned that day. The classroom was retested the following day, and Pinnacle Consultants concluded that elevated mold levels were no longer present in the classroom, and no further testing was required.

An October 16, 2019, first report of injury indicates Ms. Dexter began having respiratory problems when school started in August 2019. A water leak was discovered near the eyewash station in her classroom, which led to mold developing in the wall and under the floor. Ms. Dexter stated that she believed her respiratory problems were caused by the mold exposure.

Ms. Dexter underwent a pulmonary evaluation in November 2019 by Morgan Meeks, PA-C, and was diagnosed with mold exposure, underlying asthma exacerbated by mold exposure, and rhinitis. PA-C Meeks recommended allergy testing, among other things. Ms. Dexter returned a month later for treatment of chronic lung disease due to mold exposure. Her breath sounds were clear, and she was given a new prescription for Symbicort and Singulair. Based on the evidence submitted, the claims administrator rejected the claim on November 21, 2019. Ms. Dexter protested the decision.

Ms. Dexter testified in a deposition that when she returned to work in August 2019, she noticed a lot of moisture and a strange smell in her classroom, as did her students. About two weeks later, she developed wheezing, nasal congestion, fatigue, and difficulty breathing. Several kinds of mold were discovered in the floor and wall of her classroom, including black mold. Ms. Dexter stated that she had experienced seasonal allergies in the past, but she asserted that the symptoms were much different than those she experienced as a result of the mold exposure. She denied any respiratory issues or shortness of breath prior to the mold exposure and alleged that she had never been diagnosed with bronchitis prior to August 2019.²

At the request of the claims administrator, Christopher Martin, M.D., performed a medical record review in which he opined that Ms. Dexter's rhinitis and asthma preexisted the mold exposure. He noted that the medical records indicate Ms. Dexter suffered from the conditions as early as October 18, 2016. Dr. Martin further opined that Ms. Dexter's rhinitis and asthma were not aggravated by her exposure to mold at work. He noted that there is little evidence to support a causal relationship between Ms. Dexter's symptoms and her workplace mold exposure because she presented with similar symptoms long before August 2019. Further, Dr. Martin found little

²Despite Ms. Dexter's assertion, the record shows that in March 2016, Ms. Dexter sought treatment from PA-C Yousaf for sinus drainage, coughing, sneezing, and a productive cough for three months. She was diagnosed with acute sinusitis and an upper respiratory infection. Ms. Dexter was treated several times for sinus and respiratory issues, including bronchitis, between March 2016 and May 2019.

evidence that Ms. Dexter's condition improved after her classroom was cleared of mold. Dr. Martin explained that people are constantly exposed to mold throughout their days and that the air sampling results from September 26, 2019, showed a higher spore count in the school parking lot than in Ms. Dexter's classroom. Dr. Martin stated that there is no standard for determining what levels of mold are safe or hazardous.

The Office of Judges affirmed the claims administrator's rejection of the claim. It found that the evidence shows that there was black mold present in Ms. Dexter's classroom and that Ms. Dexter was exposed to the mold in the course of and resulting from her employment. However, the Office of Judges concluded that Ms. Dexter did not sustain a discrete new injury and that all of her symptoms predated the occupational exposure. The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its order on December 17, 2021.

On appeal, petitioner argues that the Board of Review erred in affirming the Office of Judge' order because Ms. Dexter has proven by a preponderance of the evidence that her work-related mold exposure caused an exacerbation of her preexisting condition. After review, we agree with the reasoning and conclusions of the Office of Judges as affirmed by the Board of Review. Pursuant to West Virginia Code § 23-4-1, employees who receive injuries in the course of and as a result of their covered employment are entitled to benefits. For an injury to be compensable it must be a personal injury that was received in the course of employment, and it must have resulted from that employment. *See Barnett v. State Workmen's Comp. Comm'r*, 153 W. Va. 796, 172 S.E.2d 698 (1970). This Court has recently provided additional guidance for compensability cases when preexisting conditions are involved. In Syllabus Point 5 of *Moore v. ICG Tygart Valley, Inc.*, 247 W. Va. 292, 879 S.E.2d 779 (2022), this Court stated that:

[a] claimant's disability will be presumed to have resulted from the compensable injury if: (1) before the injury, the claimant's preexisting disease or condition was asymptomatic, and (2) following the injury, the symptoms of the disabling disease or condition appeared and continuously manifested themselves afterwards. There still must be sufficient medical evidence to show a causal relationship between the compensable injury and the disability, or the nature of the accident, combined with the other facts of the case, raises a natural inference of causation. This presumption is not conclusive; it may be rebutted by the employer.

In this case, Ms. Dexter has not shown that she sustained a discrete new injury in the course of her employment. Though she was exposed to black mold in the course of her employment, the record fails to show that such exposure caused her to develop a discrete new injury. The record also fails to show that Ms. Dexter's asthma and rhinitis were asymptomatic prior to the occupational mold exposure. Medical records clearly show that Ms. Dexter suffered from the same symptoms before, during, and after her exposure to black mold. The rejection of the claim is therefore affirmed.

Affirmed.

ISSUED: January 25, 2024

CONCURRED IN BY:

Chief Justice Tim Armstead
Justice Elizabeth D. Walker
Justice John A. Hutchison
Justice William R. Wooton
Justice C. Haley Bunn