

**STATE OF WEST VIRGINIA**  
**SUPREME COURT OF APPEALS**

**Trula Martin,**  
**Claimant Below, Petitioner**

vs.) **No. 22-0358** (BOR Appeal No. 2057515)  
(JCN: 2021010228)

**American Medical Facilities Management,**  
**Employer Below, Respondent**

**MEMORANDUM DECISION**

Petitioner Trula Martin appeals the decision of the West Virginia Workers' Compensation Board of Review ("Board of Review"). Respondent American Medical Facilities Management filed a timely response.<sup>1</sup> 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 April 21, 2022. 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. Martin, a licensed practical nurse, alleges that she sustained an injury to her back while lifting a patient in late 2020. Angel O'Quinn, D.O., completed a report of injury approximately three weeks after the alleged injury and indicated that Ms. Martin suffered an occupational injury to her middle and lower back causing saddle paresthesia, decreased bilateral patellar reflexes, and diminished sensation in the bilateral lower extremities. She noted that the injury aggravated a prior lower back disease. The claims administrator rejected the claim due to the fact that the evidence did not indicate that Ms. Martin sustained a discrete new injury. Ms. Miller protested the decision. She then sought treatment from Dr. Rice at Highlands Neurosurgery upon referral from Dr. O'Quinn. Dr. Rice noted that Ms. Martin's MRI showed appropriate changes given her history of back surgery at L5 with no signs of a recurrent disc herniation.

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<sup>1</sup>Petitioner, Trula Martin, is represented by Reginald D. Henry, and respondent, American Medical Facilities Management, is represented by Jillian L. Moore and Steven K. Wellman.

Ms. Martin testified in a deposition that immediately prior to the injury, she was not experiencing any lower back pain and was able to complete all of her work duties without issue. She admitted that she previously underwent lumbar spine surgery but asserted that she did not have any back pain, other than occasional flare-ups, after she recovered from the surgery. Ms. Martin explained that the flare-ups were more like sore muscles and were not like the symptoms she had experienced since her work injury.

At the request of respondent, Marsha Bailey, M.D., performed an independent medical evaluation and completed a report in which she opined that Ms. Martin suffered from thoracolumbar pain since at least 2012. Dr. Bailey stated that her review of the medical records, including a yearly employee health examination form, shows that Ms. Martin's symptoms were the same before and after her alleged work injury. Dr. Bailey opined that Ms. Martin did not suffer a discrete new injury on September 21, 2020, nor did she suffer an aggravation or progression of her preexisting condition. Dr. Bailey concluded that Ms. Martin's symptoms were the result of obesity and the natural progression of her preexisting degenerative spine disease.

In its November 1, 2021, order, the Office of Judges affirmed the claims administrator's rejection of the claim after finding the record contained insufficient medical evidence to demonstrate that Ms. Martin sustained a new injury and further finding that the only conditions suggested by her physicians were pain-related symptoms, not diagnoses. The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its order on April 21, 2022.

On appeal, petitioner asserts two assignments of error. First, that the Board of Review was clearly wrong in affirming the Office of Judges' order, and second, that the Board of Review was clearly wrong in finding that Ms. Martin failed to prove that she sustained a compensable injury. In support of her assignments of error, Ms. Martin argues that she sustained a discrete new injury on September 21, 2020, and that her claim should be held compensable per *Moore v. ICG Tygart Valley, Inc.*, 247 W. Va. 292, 879 S.E.2d 779 (2022). In Syllabus Point 5 of *Moore*, 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.” Ms. Martin asserts that her claim was denied simply because she had a prior back injury that required surgery. She argues that prior to September 21, 2020, her back pain did not cause her to miss work, and she was capable of performing all of her duties. She has not worked since the injury occurred.

We have reviewed the evidence of record, including Ms. Martin's treatment notes prior to the alleged injury, and we agree with the reasoning and conclusions of the Office of Judges, as adopted by the Board of Review. The diagnoses indicated on the report of injury do not support a finding of a discrete new injury. Dr. O'Quinn, who completed the physician's section of both reports of injury, indicated Ms. Martin suffered from dorsalgia, sciatica, nausea and vomiting, lumbago with sciatica, and anesthesia of skin, all of which are symptoms, not diagnoses. As the Office of Judges noted, this Court held in *Knicely v. Myers Funtime Café, LLC*, No. 14-0010, 2015

WL 1244552 (W. Va. Mar. 17, 2015) (memorandum decision) that symptoms cannot be held compensable because they are not diagnoses. The record in this case shows that neither Dr. O'Quinn nor Dr. Rice diagnosed anything other than pain-related symptoms; therefore, it cannot be found that Ms. Martin suffered a discrete new injury. The diagnoses refute the occurrence of a discrete new injury.

We also find that the record fails to support Ms. Martin's assertion that her claim should be held compensable under *Moore*. Though Ms. Martin asserts that she was asymptomatic prior to the alleged injury, the record clearly shows otherwise. Numerous treatment notes were submitted ranging from May 3, 2013, to September 9, 2020, that indicate Ms. Martin suffered from severe, multilevel degenerative disc disease and a herniated L5-S1 disc, for which she underwent surgery in 2014. Following the surgery, Ms. Martin continued to have lower back pain that radiated into her right and then left leg. In a September 9, 2020, employee health examination form, it was noted that Ms. Martin had a history of a back injury, surgeries, and chronic back pain. The Office of Judges and Board of Review were correct to find that Ms. Martin has failed to establish that she sustained a compensable injury. The rejection of the claim is 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