

**IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA**

**KANAWHA COUNTY BOARD OF EDUCATION,  
Employer Below, Petitioner**

**v.) No. 24-ICA-49**

(JCN: 2020007763)

**BARBARA A. EDWARDS,  
Claimant Below, Respondent**

**FILED  
July 1, 2024**

ASHLEY N. DEEM, CHIEF DEPUTY CLERK  
INTERMEDIATE COURT OF APPEALS  
OF WEST VIRGINIA

**MEMORANDUM DECISION**

Petitioner Kanawha County Board of Education (“Kanawha BOE”) appeals the January 4, 2024, order of the Workers’ Compensation Board of Review (“Board”). Respondent Barbara Edwards filed a response.<sup>1</sup> Kanawha BOE did not file a reply. The issue on appeal is whether the Board erred in reversing the claim administrator and holding Ms. Edwards’ claim compensable for the diagnosis of cervicothoracic sprain/strain with radiculopathy.

This Court has jurisdiction over this appeal pursuant to West Virginia Code § 51-11-4 (2022). After considering the parties’ arguments, the record on appeal, and the applicable law, this Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision affirming the Board’s order is appropriate under Rule 21 of the Rules of Appellate Procedure.

Prior to the compensable injury of September 10, 2019, in this case, Ms. Edwards suffered from cervical spine issues. On June 13, 2017, she was seen by Jennifer Nunley, FNP-C at CAMC Primary Care for joint pain in the right arm, and it was noted that she had a history of cervical radiculopathy. Ms. Edwards was seen by Nurse Nunley for a follow-up on April 18, 2018, for right elbow and bilateral knee pain, and she stated that she also had left-sided neck swelling. Nurse Nunley diagnosed osteoarthritis. On July 25, 2018, Ms. Edwards reported to Nurse Nunley that she was taking a lot of ibuprofen for joint pain, and she complained of swelling and tenderness in the left side of her neck. On September 25, 2018, Ms. Edwards reported right shoulder pain, left hand swelling, and left ankle swelling after rolling her ankle while on a bus. She also stated that the left side of her neck was

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<sup>1</sup> Kanawha BOE is represented by Charity K. Lawrence, Esq. Ms. Edwards is represented by Patrick K. Maroney, Esq.

swollen. Nurse Nunley diagnosed osteoarthritis and multiple joint pain with respect to these symptoms.

Turning to the compensable injury in this case, Ms. Edwards completed an Employees' and Physicians' Report of Occupational Injury on September 20, 2019, in which she stated that she sustained an injury to her neck, primarily the right side and upper shoulder area, while working as a bus aide for Kanawha BOE on September 10, 2019. Ms. Edwards described the injury as follows:

Riding on bus loaded with kids, bad language was being used in back. After several stops, I proceeded to the back to maintain the order. I sat in the very last seat on the right-hand side. As we were traveling, (if I may mention) I could only see what was directly out the window. Driver either hit a pothole or rear of bus went off road. I honestly can't say because I was unable to see. Felt like someone had picked my head up and jammed it [through] my chest! I remember rubbing neck, driver didn't stop so I assumed we had hit pothole. Came home, took Flexeril, Advil, used ice. When I woke in night, I was unable to move it to the [right]. Very stiff, tight.

Ms. Edwards was seen by Jody Fisher, D.C., on September 16, 2019. Dr. Fisher completed the physician's section of the Employees' and Physicians' Report of Occupational injury on September 23, 2019. Ms. Edwards reported to Dr. Fisher that she was on a school bus that hit a pothole, and that she jammed her neck. Dr. Fisher diagnosed a cervicothoracic sprain/strain with radiculopathy. Dr. Fisher opined that Ms. Edwards' injury was a direct result of an occupational injury, and that there was no aggravation of a prior injury or disease. Dr. Fisher recommended eight chiropractic visits over thirty days as a treatment plan. Ms. Edwards underwent the recommended treatment, and she was released to return to work on November 7, 2019.

On October 2, 2019, the claim administrator issued an order denying Ms. Edwards' claim. The claim administrator stated that the weighing of the evidence in this case did not support a work-related injury based on Ms. Edwards' written statement, video evidence, and the report of injury. Ms. Edwards protested this order.

On November 8, 2019, Ms. Edwards was seen by Chrystal Holstein, APRN-CNP with CAMC Primary Care. Ms. Edwards stated that she was experiencing a flare-up of severe neck pain and Dr. Fisher recommended that she see her primary care provider. Ms. Edwards described the pain as a burning sensation. Nurse Holstein's diagnosis was cervical radiculopathy, and she noted limited range of motion with rotation and lateral flexion.

Ms. Edwards gave a deposition on March 17, 2020, in which she described the incident that occurred on September 10, 2019. Ms. Edwards testified that she worked as a substitute aide for Kanawha BOE, and that her primary job duties were to sit on the bus,

maintain control of the kids, and try to control any bad language. Ms. Edwards testified that on the date of the injury, she went to the back of the bus after hearing inappropriate language and sat in the last row of the bus on the right side. Ms. Edwards stated that she felt like the bus was going around a turn or a curve, and she felt a jolt, like someone had “lifted her head and rammed it through my chest.” Ms. Edwards testified that she assumed that she could just rub some medicine on her neck when she got home, but that she woke up in the middle of the night with pain and tightness in her neck, mostly on the right side. Ms. Edwards testified that she was in a motor vehicle accident around twelve years ago, which resulted in whiplash and a neck injury, which were treated by Dr. Fisher. She also testified that she was not having any problems with her neck immediately prior to the September 10, 2019, injury. At the time of the deposition, Ms. Edwards testified that she no longer had symptoms resulting from the injury.

On December 1, 2020, the Workers’ Compensation Office of Judges (OOJ) issued an order affirming the claim administrator’s order, which denied Ms. Edwards’ application for benefits. The order stated that Ms. Edwards described a specific, isolated, fortuitous event on September 10, 2019. The OOJ stated that the only medical evidence in the record that addressed compensability was from Dr. Fisher, who treated Ms. Edwards since May 6, 2013. The OOJ concluded that Ms. Edwards’ description of her reaction to being jolted on the school bus did not comport with the video showing the actual event, as she did not twist or rub her neck in the video. Ms. Edwards protested this decision.

On May 20, 2021, the Board issued an order affirming the OOJ’s order. The Board adopted the findings of fact and conclusions of law contained in the December 1, 2020, OOJ order. Ms. Edwards appealed the Board’s order to the Supreme Court of Appeals of West Virginia.

The Supreme Court of Appeals of West Virginia issued a memorandum decision, *Edwards v. Kanawha County Board of Education*, No. 21-0480, 2023 WL 356195 (W. Va. Jan. 23, 2023) (memorandum decision), which reversed the Board’s order and remanded to the Board with directions to analyze the case under the standard set forth in *Moore v. IGC Tygart Valley, LLC*, 247 W. Va. 292, 879 S.E.2d 779 (2022). The Court noted that although Ms. Edwards had preexisting cervical issues, the record was unclear as to when or if her preexisting condition was asymptomatic before the alleged injury.

On January 4, 2024, the Board issued an order reversing the decision of the claim administrator and holding the claim compensable for cervicothoracic sprain/strain with radiculopathy. The Board found that for at least one year before the compensable injury, Ms. Edwards’ preexisting cervical issues were asymptomatic, and that after the injury, cervical symptoms appeared and continuously manifested themselves. Additionally, the Board found that there was sufficient medical evidence to show a causal relationship between the compensable injury and the disability. Further, the Board noted that Dr. Fisher opined that the injury on September 10, 2019, did not aggravate a prior injury. Based on

the foregoing, the Board held Ms. Edwards' claim compensable for cervicothoracic sprain/strain with radiculopathy. It is from this order that Kanawha BOE now appeals.

Our standard of review is set forth in West Virginia Code § 23-5-12a(b) (2022), in part, as follows:

The Intermediate Court of Appeals may affirm the order or decision of the Workers' Compensation Board of Review or remand the case for further proceedings. It shall reverse, vacate, or modify the order or decision of the Workers' Compensation Board of Review, if the substantial rights of the petitioner or petitioners have been prejudiced because the Board of Review's findings are:

- (1) In violation of statutory provisions;
- (2) In excess of the statutory authority or jurisdiction of the Board of Review;
- (3) Made upon unlawful procedures;
- (4) Affected by other error of law;
- (5) Clearly wrong in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

On appeal, Kanawha BOE argues that the Board was clearly wrong and made an error of law in misinterpreting *Moore* and finding that Ms. Edwards suffered a discrete new injury. Further, Kanawha BOE argues that there is insufficient medical evidence to show a causal relationship between the compensable injury and Ms. Edwards' disability. We disagree.

As the Supreme Court of Appeals of West Virginia has set forth, "[t]he 'clearly wrong' and the 'arbitrary and capricious' standards of review are deferential ones which presume an agency's actions are valid as long as the decision is supported by substantial evidence or by a rational basis." Syl. Pt. 3, *In re Queen*, 196 W. Va. 442, 473 S.E.2d 483 (1996). With this deferential standard of review in mind, we cannot conclude that the Board was clearly wrong in reversing the claim administrator's order and holding the claim compensable for the diagnosis of cervicothoracic sprain/strain with radiculopathy.

In Syllabus Point 5 of *Moore v. ICG Tygart Valley*, 247 W. Va. 292, 879 S.E.2d 779 (2022), the Supreme Court of Appeals of West Virginia held 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.

The Board found that for at least one year prior to the compensable injury, Ms. Edwards' cervical issues were asymptomatic. The Board also found that there was sufficient medical evidence to show a causal relationship between the compensable injury and Ms. Edwards' disability. Further, Dr. Fisher opined that the diagnosis of cervicothoracic sprain/strain with radiculopathy was the direct result of an occupational injury, and that there was no aggravation of a prior injury. As noted by the Board, the video of the September 10, 2019, injury submitted by counsel for Kanawha BOE appears to show that the bus was jarred, and Ms. Edwards swayed in her seat. Following the injury, Ms. Edwards complained of continual pain in her neck. Based on the foregoing, we conclude that the Board was not clearly wrong in holding the claim compensable for cervicothoracic sprain/strain with radiculopathy.

Accordingly, we affirm the Board's January 4, 2024, order.

Affirmed.

**ISSUED:** July 1, 2024

**CONCURRED IN BY:**

Chief Judge Thomas E. Scarr  
Judge Charles O. Lorensen  
Judge Daniel W. Greear