

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

**ANGELA HOLLANDSWORTH,
Claimant Below, Petitioner**

v.) **No. 24-ICA-59** (JCN: 2022021646)

**WORKFORCE WEST VIRGINIA,
Employer Below, Respondent**

**FILED
July 30, 2024**

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

MEMORANDUM DECISION

Petitioner Angela Hollandsworth appeals the January 16, 2024, decision of the Worker’s Compensation Board of Review (“Board”). Respondent WorkForce West Virginia (“WorkForce”) filed a response.¹ Ms. Hollandsworth did not reply. The issue on appeal is whether the Board erred in affirming the claim administrator’s order, which rejected Ms. Hollandsworth’s workers’ compensation claim.

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.

Ms. Hollandsworth assisted a coworker, who had a medical emergency while at work on January 28, 2022. While assisting her coworker from the office to her car, Ms. Hollandsworth alleged that she was injured. Ms. Hollandsworth returned to work after this incident.²

On February 8, 2022, Ms. Hollandsworth was seen by Joseph Dawson, D.O. She complained of a possible pulled muscle in her low back and anxiety. She subsequently submitted a workers’ compensation claim. On April 12, 2022, Ms. Hollandsworth underwent an x-ray of her right shoulder. The x-ray revealed no acute fracture; no

¹ Ms. Hollandsworth is represented by Patrick K. Maroney, Esq. WorkForce is represented by Steven K. Wellman, Esq., and James W. Heslep, Esq.

² This Court notes that Ms. Hollandsworth’s Employees’ and Physicians’ Report of Occupational Injury form was not included in the record below or on appeal.

dislocation; no joint effusion; adequate bone mineralization; and no acute bony abnormality. On April 26, 2022, Ms. Hollandsworth followed-up with Dr. Dawson. She complained of ongoing right shoulder pain. The assessment was arthralgia of the right shoulder region and strain of the right biceps tendon.

On April 27, 2022, Ms. Hollandsworth underwent an x-ray of the right humerus. The x-ray revealed no evidence of fracture, bony structures appeared intact, and no lytic or blastic lesions were seen. This x-ray was considered a negative exam. On May 6, 2022, Ms. Hollandsworth underwent an additional x-ray of the right humerus. The impression was no specific abnormalities of the biceps muscle or tendon with limited evaluation at the shoulder and elbow joints; there appeared to be a normal signal of the long head of the biceps tendon at the shoulder joint and the distal tendon could be visualized into the antecubital fossa but its attachment to the radius could not be confirmed; there was minimal nonspecific edema inferior to the acromion with no other abnormalities identified.

On May 23, 2022, the claim administrator issued an order denying Ms. Hollandsworth's workers' compensation claim and stating that the evidence did not support that a work-related injury occurred. The order noted that Ms. Hollandsworth first saw Dr. Dawson on February 8, 2022, for the injury, but that notes from that visit have no mention of a shoulder injury. Further, the claim administrator noted that the shoulder injury was not mentioned until the April 26, 2022, visit with Dr. Dawson, but that notes from that visit stated that pain had been occurring for two months, which was not consistent with a January 28, 2022, injury date. Ms. Hollandsworth protested this order.

On January 10, 2023, Ms. Hollandsworth testified that while working at WorkForce in Summersville, West Virginia, on January 28, 2022, her coworker had a medical emergency while at work. Ms. Hollandsworth stated that she assisted her coworker from the floor to a chair, and that she felt a pulling in her neck and shoulder area. Ms. Hollandsworth testified that she assisted her coworker to her car, and that while lifting her into the car she was pinned between her coworker and the dashboard. Ms. Hollandsworth testified that after this incident she experienced pain in her shoulder, which she described as dull and nagging.

On February 13, 2023, Jennifer Adkins, Employment Programs Office Manager 3 for WorkForce completed an affidavit regarding Ms. Hollandsworth's claim. Ms. Adkins stated that Ms. Hollandsworth first reported her alleged injury to WorkForce on April 27, 2022. Ms. Adkins also stated that although Ms. Hollandsworth testified that she completed a written statement on January 29, 2022, regarding her injury, no such documentation was found in her file. Additionally, she noted that WorkForce policy is to complete an injury/incident report on the date of any alleged work-related injury, or as soon thereafter as possible. However, Ms. Adkins acknowledged that Ms. Hollandsworth's injury allegedly occurred while helping a coworker who suffered a medical emergency, and that an incident report regarding the coworker's event was completed on January 29, 2022.

On March 6, 2023, Carrie Sizemore, Deputy Executive Director of WorkForce, completed an affidavit regarding Ms. Hollandsworth's claim. Ms. Sizemore stated that Ms. Hollandsworth reported the alleged injury to WorkForce on April 27, 2022. Ms. Sizemore asserted that although Ms. Hollandsworth testified that she had completed a written statement on January 29, 2022, regarding the events of the previous day, no such statement was contained in her personnel file. Ms. Sizemore also testified that Ms. Hollandsworth has filed at least nine workers' compensation claims, and that she is thus familiar with WorkForce procedures and policies regarding documentation of work-related injuries.

On August 15, 2023, Ms. Hollandsworth's coworker, Erica Groves gave a deposition, in which she testified regarding the events of January 28, 2022. Ms. Groves said that a coworker experienced a medical emergency. Ms. Groves recalled that when the coworker's husband arrived, she, Ms. Hollandsworth, and the coworker's husband picked up the ailing coworker, put her in a chair with wheels, and rolled her to her husband's car. Ms. Groves also stated that Ms. Hollandsworth picked up the unwell coworker and pushed her into the car and was pinned between the dashboard and the car door.

On January 16, 2024, the Board issued an order affirming the claim administrator's denial of the claim. The Board noted that Ms. Hollandsworth's WC-1 form was not in the record. Further, the Board found that Dr. Dawson's records did not note that Ms. Hollandsworth had a shoulder injury until April 26, 2022, three months after the alleged event on January 28, 2022. The Board determined that Ms. Hollandsworth's claim was questionable due to the delay in prosecuting the claim. The Board concluded that although Ms. Hollandsworth testified that she reported her injury to WorkForce on January 28, 2022, and again on January 31, 2022, this was refuted by the affidavits of Ms. Sizemore and Ms. Adkins. Further, the Board found that there was no credible evidence that Ms. Hollandsworth immediately provided notice of her injury to WorkForce, and that there were too many discrepancies in the evidence to support compensability of the claim. The Board concluded that based on the preponderance of the evidence, Ms. Hollandsworth did not sustain an injury in the course of and as a result of her employment on January 28, 2022.

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, Ms. Hollandsworth argues that the Board failed to properly weigh the evidence, that the employer's affidavits did not challenge that Ms. Hollandsworth sustained an injury while helping her coworker, and it is clear from the medical evidence that she sustained some type of injury to her upper back/right shoulder. We disagree.

As our Supreme Court of Appeals 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 find that the Board was clearly wrong in affirming the claim administrator’s order and finding that the claim was not compensable.

It is well established that in order for a claim to be held compensable, “three elements must coexist: (1) a personal injury (2) received in the course of employment and (3) resulting from that employment.” Syl. Pt. 1, *Barnett v. State Workmen’s Comp. Comm’r*, 153 W. Va. 796, 172 S.E.2d 698 (1970). “In order to establish compensability an employee who suffers a disability in the course of his employment must show by competent evidence that there was a causal connection between such disability and his employment.” Syl. Pt. 3, *Deverick v. State Comp. Dir.*, 150 W. Va. 145, 144 S.E.2d 498 (1965). Further, the Supreme Court of Appeals of West Virginia has held that “an injury which occurs while gratuitously assisting a co-employee with a task of a purely personal nature, involving no instrumentalities of employment and without any alleged involvement of or benefit to the employer, does not ‘result from’ employment.” *Morton v. W. Va. Off. of Ins. Comm’r*, 231 W. Va. 719, 726, 749 S.E.2d 612, 619 (2013).

West Virginia Code of State Rules § 85-1-3.1 (2009) provides as follows:

Immediately after sustaining an occupational injury, a claimant should (1) seek necessary medical care; (2) immediately on the occurrence of the injury or as soon as practicable thereafter give or cause to be given to the employer or any of the employer’s agents a written notice of the occurrence of the injury; and (3) file a workers’ compensation claim or request that one be filed on his or her behalf. Failure to immediately give notice to the employer of the injury weighs against a finding of compensability in the weighing of the

evidence mandated by W. Va. Code § 23-4-1g and dilutes the credibility and reliability of the claim. . . .

The Board concluded, and we agree, that there were too many discrepancies in the evidence to support the compensability of this claim, and that the claim was questionable due to the delay in reporting. As referenced by the Board, Dr. Dawson’s notes from Ms. Hollandsworth’s February 8, 2022, visit did not reference any injury or complaints regarding her shoulder or arm. Moreover, the affidavits of Ms. Adkins and Ms. Sizemore refuted Ms. Hollandsworth’s testimony that she reported her injury to her supervisor on January 28, 2022. Thus, based on the foregoing, we find that the Board’s conclusion that Ms. Hollandsworth’s claim was not compensable is based upon sufficient evidence in the record, and we decline to disturb any credibility determinations made by the Board. *See Martin v. Randolph Cnty. Bd. of Educ.*, 195 W. Va. 297, 306, 465 S.E.2d 399, 408 (1995) (“We cannot overlook the role that credibility places in factual determinations, a matter reserved exclusively for the trier of fact. We must defer to the ALJ’s credibility determinations and inferences from the evidence. . . .”). Thus, we conclude that the Board did not err in affirming the claim administrator’s order rejecting the claim and concluding that Ms. Hollandsworth did not prove by a preponderance of the evidence that she sustained an injury in the course of and as a result of her employment.

Accordingly, we affirm the Board’s January 16, 2024, order.

Affirmed.

ISSUED: July 30, 2024

CONCURRED IN BY:

Judge Charles O. Lorensen

Judge Daniel W. Greear

Chief Judge Thomas E. Scarr not participating