

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

**SOUTH HUNTINGTON ANIMAL HOSPITAL, PLLC,
Employer Below, Petitioner**

v.) No. 26-ICA-69 (JCN: 2026003464)

**SHAYNE SULLIVAN,
Claimant Below, Respondent**

and

v.) No. 26-ICA-70 (JCN: 2026001813)

**ALISHA NEWMAN,
Claimant Below, Respondent**

and

v.) No. 26-ICA-105 (JCN: 2026001814)

**LAURA FULKS,
Claimant Below, Respondent**

FILED

August 27, 2026

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

MEMORANDUM DECISION

In these consolidated appeals, South Huntington Animal Hospital, PLLC, (“SHAH”) appeals the February 23, 2026, and March 13, 2026, orders of the Workers’ Compensation Board of Review (“Board”).¹ Respondents Ms. Sullivan and Ms. Newman filed individual responses; Ms. Fulks did not respond. SHAH filed replies to Ms. Sullivan and Ms. Newman. The issue on appeal is whether the Board erred in reversing the claim administrator’s orders rejecting these claims.

This Court has jurisdiction over this appeal pursuant to West Virginia Code § 51-11-4 (2024). 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

¹ SHAH is represented by Steven K. Wellman, Esq., and James W. Heslep, Esq. Ms. Sullivan and Ms. Newman are not represented. Ms. Fulks did not appear.

these reasons, a memorandum decision affirming the Board's order is appropriate under Rule 21 of the West Virginia Rules of Appellate Procedure.

The claimants individually filed workers' compensation claims alleging that they were potentially exposed to rabies while working for SHAH. The claimants noted that they handled a dog suspected of having rabies, which later died. In handling the dog, the claimants came in contact with the dog's saliva, and the claimants had open scratches on their exposed skin as a result of working for SHAH. The owner buried the dog and failed to take measures allowing it to be tested. The claimants further allege that Wayne County Health Department, the Cabell County Health Department, Erie Insurance Triage Now, and their regular physicians instructed them to begin rabies post-exposure prophylaxis. The claimants note that failure to begin the rabies post-exposure prophylaxis could be fatal if they contracted the disease. According to an article from *Veterinary Partner* dated January 1, 2001 (Revised on March 29, 2025) titled "Rabies in Animals," submitted by the claimants, injection treatments only work during the incubation period, and once symptoms begin, the chances of survival are slim.

By orders dated August 26, 2025, August 28, 2025, and September 30, 2025, the claim administrator rejected these claims, finding that injuries did not occur in the course of and resulting from employment. The claimants appealed the orders to the Board. On February 23, 2026, and March 13, 2026, the Board reversed the claim administrator's orders. The Board held the claims compensable on a limited medical basis, specifically noting that all medical expenses associated with the claimants' post-exposure prophylaxis treatment should be covered under the claim. SHAH now appeals the Board's orders.

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.

Syl. Pt. 2, *Duff v. Kanawha Cnty. Comm’n*, 250 W. Va. 510, 905 S.E.2d 528 (2024).

SHAH argues that a claim cannot be held compensable for exposure only. SHAH further argues that the claimants cannot establish that they suffered a personal injury due to “possible” exposure to rabies. SHAH points out that the Board did not hold the claims compensable; it only authorized medical treatment.

Ms. Sullivan and Ms. Newman argue that rabies is a deadly disease unless immediate treatment is provided after exposure. They further argue that all three claimants called multiple public health entities and Erie’s own triage line, and they were all told to get treatment. Ms. Sullivan and Ms. Newman note that, should SHAH’s arguments be accepted, it could cause hesitation and unnecessary delay in seeking treatment from those who are exposed as part of their job. Further, Ms. Sullivan and Ms. Newman contend that once symptoms of rabies appear, there is no effective treatment, and the result is death.

Three elements must coexist in workers’ compensation cases to establish compensability: (1) a personal injury (2) received in the course of employment and (3) resulting from that employment. *Barnett v. State Workmen’s Comp. Comm’r*, 153 W. Va. 796, 172 S.E.2d 698, syl. pt 1 (1970); *Sansom v. Workers’ Comp. Comm’r*, 176 W. Va. 545, 346 S.E.2d 63, syl. pt. 1 (1986).

In *Stiltner v. W. Va. Off. of Ins. Comm’r*, No. 101564, 2012 WL 3206501 (W. Va. June 18, 2012) (memorandum decision), the Supreme Court of Appeals of West Virginia (“SCAWV”) stated that, “[a]lthough medical evidence is not required in every workers’ compensation claim, it is necessary to establish compensability for some injuries that would otherwise require mere speculation in establishing a causal connection between employment and the injury.”

Here, the Board found that, based on a preponderance of the evidence, these claims should be held compensable on a limited medical basis – specifically that post-exposure prophylaxis treatment be covered under the claimants’ claims. The Board noted that the claimants’ statements related to their exposure and treatment were unrefuted.

We note that West Virginia has no statute or case law on point on this issue of the compensability of rabies exposure under workers’ compensation. When reviewing other jurisdictions for guidance, we note that the Court of Appeals of Virginia considered a similar fact pattern in *Frey v. Gunston Animal Hosp. and Cincinnati Indem. Co.*, 39 Va.

App. 414, 573 S.E.2d 307 (2002).² In *Frey*, a veterinary technician treating a feral cat with symptoms of rabies came into contact with the cat's saliva. The Virginia Court found that exposure to rabies is sufficient to establish injury, and it cited cases from other jurisdictions in support of this decision. In *Frey*, the Court held:

Other courts have “h[e]ld that persons exposed to a serious risk of contracting a disease which is commonly known to be highly contagious/infectious and potentially deadly, have been ‘injured’ for the purpose of receiving compensation under the Act.” *Jackson Township Volunteer Fire Company v. Workmen’s Compensation Appeal Board*, 140 Pa. Cmwlth. 620, 594 A.2d 826, 828 (1991). See also *Arkansas Dep’t of Correction v. Holybee*, 46 Ark. App. 232, 878 S.W.2d 420 (1994). We are persuaded, as was the court in *Doe v. City of Stamford*, 241 Conn. 692, 699 A.2d 52 (1997), that “[i]ndeed, it would be contrary to the humanitarian and remedial purpose of the act to infer that the legislature intended that an employee who sustains actual exposure to a potentially fatal infectious disease must await the onset of the disease before he can recover expenses associated with necessary, and possibly lifesaving, medical intervention.” *Id.* at 55. Thus, as the *Doe* court held, when an employee “has sustained actual exposures to life threatening infectious diseases in incidents that arose out of and occurred in the course of his employment, the [employee] has suffered compensable injuries under the act and may recover the expenses associated with reasonable medical testing and treatment.”

Id. at 423, 573 S.E.2d at 311-12 (internal citations omitted).

Upon review, we conclude that the Board was not clearly wrong in reversing the claim administrator’s order and holding the claims compensable on a limited medical basis.

We find no merit in SHAH’s argument that the animal the claimants were exposed to was not confirmed to have rabies, as it is unrefuted that the animal had rabies symptoms and that the claimants were exposed to the animal’s saliva. We note that a person potentially exposed to rabies receives the same treatment as someone who is confirmed to have been exposed to rabies. We conclude that, under the circumstances of these claims, the exposure to the saliva of a potentially rabid animal is, in itself, an injury due to the fatal nature of rabies.

² Case law from other jurisdictions is not controlling but can be helpful when presented with an issue of first impression.

We further find no merit in SHAH's argument that exposure to the rabies virus is similar to other types of exposure cases, such as occupational pneumoconiosis. SHAH cites *Marlin v. Bill Rich Constr., Inc.*, 198 W. Va. 635, 482 S.E.2d. 620 (1996), which is a case concerning asbestos exposure. We disagree with SHAH's statement that this case is "dispositive and directly on point." In *Marlin*, construction workers brought civil actions against their employer as a result of being exposed to asbestos. The SCAWV held that the workers' "fear of contracting an asbestos related disease" was insufficient to sustain a workers' compensation claim for an occupational disease. In determining that the workers could not maintain a workers' compensation claim under the facts, the Court found that they could pursue their civil actions for negligent infliction of emotional distress.

First, as aforementioned, the claimants were injured when they were potentially exposed to the rabies virus by contact with a sick animal's excessive saliva on their exposed skin, areas of which were broken by scratches in the course of their employment. *Marlin*, on the other hand, addresses a civil action alleging an occupational disease due to asbestos dust exposure. Second, unlike exposure to coal dust or asbestos, exposure to rabies can result in a uniquely fatal disease that requires immediate intervention to prevent death. Here, the claimants had no choice but to pursue immediate treatment before becoming symptomatic, as was advised by health care professionals, including the claim administrator's own triage line.

Finally, as the SCAWV 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 orders rejecting the claims. We conclude that there is a rational basis for the Board's actions.

Accordingly, we affirm the Board's February 23, 2026, and March 13, 2026, orders.

Affirmed.

ISSUED: August 27, 2026

CONCURRED IN BY:

Chief Judge Daniel W. Greear
Judge Charles O. Lorensen
Judge S. Ryan White