IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

FILED
November 10, 2026
ASHLEY N. DEEM, CHIEF DEPUTY CLERK
INTERMEDIATE COURT OF APPEALS
OF WEST VIRGINIA

BAYER US, LLC,
Employer Below, Petitioner

v.) No. 26-ICA-25 (JCN: 2025001250)

MICHAEL GARDILL,
Claimant Below, Respondent

MEMORANDUM DECISION

Petitioner Bayer US, LLC ("Bayer") appeals the December 11, 2025, order of the Workers' Compensation Board of Review ("Board"). Respondent Michael Gardill filed a timely response.[1] Petitioner filed a reply brief. The issue on appeal is whether the Board erred in reversing the claim administrator's order that rejected Mr. Gardill's claim for the occupational disease of follicular lymphoma ("FL"), which is a type of non-Hodgkin's lymphoma ("NHL").

This Court has jurisdiction over this appeal pursuant to West Virginia Code § 51-11-4 (2026). 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 West Virginia Rules of Appellate Procedure.

Mr. Gardill worked for Bayer, and its predecessor companies, in various jobs from 1981 to 2024, when he retired.[2] On October 22, 2024, Mr. Gardill completed an Employees' and Physicians' Report of Occupational Injury or Disease indicating that he suffered from an occupational disease with a date of last exposure of February 1, 2024. Mr. Gardill indicated that during the course of his employment with Bayer, he experienced regular exposures to harmful chemicals and solvents, including benzene and benzene-

[1] Petitioner is represented by Michael P. Leahey, Esq., and Lauren Hutchins McCartney, Esq. Respondent is represented by R. Dean Hartley, Esq.

[2] The record shows that Mobay Chemical Corporation hired Mr. Gardill in 1981 and that through a series of corporate changes, Bayer came to be Mr. Gardill's employer. In 2015, Bayer created a separate entity, Covestro, which employed Mr. Gardill until he retired. Mr. Gardill's last day of work was July 17, 2021, and he was on long-term disability from then until he retired in February of 2024.

containing aromatic hydrocarbon-containing chemicals. Further, Mr. Gardill alleged that these chemicals have been demonstrated to cause FL, with which he was diagnosed on or around October 29, 2021. However, Mr. Gardill noted that he did not relate his occupational exposure to the disease until sometime in late fall 2023 following a conversation with his son. Physician Jondavid Pollock, M.D., Ph.D., completed the physician's section of the claim form and indicated that Mr. Gardill developed NHL (follicular) as an occupational disease.

In an affidavit dated October 18, 2024, and in his June 26, 2025, deposition, Mr. Gardill provided an account of the different jobs he held over the course of his career at Bayer and his allegations of chemical exposure. In August 1981, Bayer (then known as Mobay Chemical Corporation) hired Mr. Gardill to work as a member of the labor gang/utility crew. Shortly thereafter, Mr. Gardill bid into a B-Operator/Technician position in the Isocyanate Unit, primarily working in the plant's multi-purpose building where various chemical intermediaries and final products were manufactured. Mr. Gardill's duties in later positions required him to take test tube samples of chemicals including monochlorobenzene ("MCB"), hexane, and phosgene. The company used hexane as a solvent in the production of toluene diisocyanate ("TDS") and methylene diphenyl isocyanate ("MDI"). Mr. Gardill also alleged exposure to formaldehyde, stored in an above-ground tank that vented from the roof into the area surrounding the Isocyanate Unit; he also noted inhalation and dermal exposure to the various chemical cleaners and degreasers, like NAPA, CRC, and PB B'Laster, that he used in the plant.

When Bayer later phased out the Isocyanate Unit, Mr. Gardill was assigned to the maintenance department in 1986 and 1987 as a temporary maintenance helper, working in various production units throughout the plant. During this time, he regularly worked in the Dinitrotoluene ("DNT") Unit, and he spent about a month assigned to the nitrations area, which consisted of the Mono-Nitrated Benzene ("MNB") Unit, the DNT Unit, and others. Here, the plant used pure benzene to manufacture DNT. Mr. Gardill said that he regularly smelled benzene and DNT in this area of the plant. Further, as his job required him to remove and service pumps, pipes, valves, etc., Mr. Gardill alleged routine inhalation and dermal exposures to the residual chemicals and solvents on and in the equipment. Mr. Gardill also noted dermal and inhalation exposures occurred when he used a Safety-Kleen "red sink-and-barrel" to clean equipment and parts, and other chemical cleaners and degreasers. Another source of exposure, Mr. Gardill explained, emanated from an open-air sewage/trench flowing near the various production units throughout the plant, producing pungent and intense fumes into the ambient air surrounding his work areas.

Following the maintenance position, Mr. Gardill became a B-Operator/Technician at the tank farm ("tank farm operator") from 1987 until the mid to late 2010s. It was at the tank farm where Bayer handled and stored bulk raw material – such as chemical liquids and solvents. As an operator, Mr. Gardill regularly unloaded or loaded chemicals including fuel oil, aniline oil, benzene, toluene, MDI/MR, MNB, TDI, and 505 Solvent from tanker

trucks, rail tank cars, and brown-water barges. According to Mr. Gardill, he became exposed to the various chemicals from the frequent leaks and spills of chemicals that occurred during the loading and unloading process. Mr. Gardill stated that he was regularly exposed to benzene via inhalation or dermal contact from leaks and spills and commented that since the spills needed to be addressed quickly, he did not have time to put on a respirator. Further, Mr. Gardill noted that respirators were only required during the process of connecting/disconnecting pipes and hoses. As he was responsible for hooking up the piping, hoses, and pumps, Mr. Gardill said he regularly smelled fumes from the chemicals being transferred.

Mr. Gardill also alleged additional benzene exposure from the following: an above-ground tank of the product that had a floating, pressurized roof that vented to the surrounding area; residue of benzene and other products tracked into a metal hut where he and other operators would gather as they waited during the unloading process. Mr. Gardill said that there was no handwashing station available in the metal hut, so the workers could not clean chemicals off their skin while they were in the hut. Further, he said that he regularly smelled fumes from the chemicals being transferred while in the metal hut. In the mid-to late 2010's, Mr. Gardill became an A-Operator/Technician, but his job duties remained about the same. According to Mr. Gardill, he worked in and around the tank farm through February of 2016.

In February of 2016, Mr. Gardill worked in the Texin Unit until May of 2016 when he went to work as an A-Operator/Technician in the Environmental and Utilities Unit ("E & U"), which served as the internal wastewater treatment center for the entire plant. Mr. Gardill noted that the open trench system ultimately flowed to the E & U Unit. Here, Mr. Gardill said he smelled all of the fumes from the various treatment processes. He remained in this unit, working as an A-Technician and E-Technician, until July 17, 2021.

In his deposition testimony, Mr. Gardill described two notable dermal exposures to TDS and CHI. These exposures resulted from malfunctions that caused him to be soaked by the chemicals. After each instance, he immediately went for a safety shower, and after the CHI exposure, he received precautionary oxygen as well. Finally, Mr. Gardill testified that he smoked approximately a pack of cigarettes a day from 1975 through 1995. From 1995 through 2021, he reduced his smoking to a half a pack of cigarettes per day.

In his affidavit, Mr. Gardill averred that he was never warned that benzene could cause cancer or other diseases and he did not receive any safety training about the chemical. Although Mr. Gardill said that personal air monitoring for exposure was occasionally performed at the tank farm, he was never advised of his results. Mr. Gardill also said that the plant nurse performed yearly blood tests on him and other employees, but he never received the results. Sometime in late October or early November of 2021, Mr. Gardill received the diagnosis of FL. According to Mr. Gardill, he had a conversation with his son

in late fall of 2023, and for the first time, began to suspect a link between his occupational exposures and his NHL/FL.

Stephen Petty, P.E., C.I.H., C.S.P.,[3] (a certified industrial hygienist), interviewed Mr. Gardill on January 22, 2025. Mr. Petty noted that Mr. Gardill was diagnosed with FL in November of 2021. Mr. Gardill reviewed his job history, noting the various chemical exposures in the positions he held at Bayer from August of 1981 through July of 2021. Mr. Gardill reported that he experienced inhalation and contact exposure to benzene while working in the Isocyanate Unit from 1981 to 1986. He experienced similar exposures to cleaning chemicals in a Safety-Keen Sink from 1986 to 1987 while working as a maintenance helper in the DNT Unit. Then, Mr. Gardill told Mr. Petty of exposures to benzene related to loading/unloading chemicals including benzene, toluene, MDI/MR, fuel oil, and aniline oil from barges and working near a chemical sewer from 1987 to 2017, while working as a tank farm operator. Mr. Gardill noted that leaks and spills occurred during the transfer process, and he only had to wear a respirator during the process of connecting the pipes and hoses, but that he regularly smelled benzene during the unloading process while he was not wearing a respirator. Further, Mr. Gardill reported that the respirators the company supplied did not always fit his face well. Mr. Gardill reported that at times, the chemical operators in Block 17 of the DNT Unit would burn off the "rag layer" that was on top of the MNB.[4] Mr. Gardill noted that pungent fumes came from that process and that fumes from the sewer/trench system were also intense. According to Mr. Gardill, he once wore a personal air monitor while working at the tank farm; however, he never received the test results. Mr. Gardill also reported that he underwent yearly blood tests for benzene when he worked at the tank farm; again, he said he never received the test results.

Mr. Petty authored a report dated February 5, 2025, in which he calculated an estimate of Mr. Gardill's occupational exposure to benzene and benzene-containing chemicals based on his interview of Mr. Gardill and through the use of multiple sources of scientific literature. Mr. Petty noted the American Industrial Hygiene Association published "Odor Thresholds for Chemicals with Established Occupational Health

[3] According to his curriculum vitae, Mr. Petty is a certified industrial hygienist and registered safety professional, with a master and undergraduate degrees in chemical engineering. Mr. Petty indicates that he has over forty-five years of forensic engineering and environmental health and safety experience and has been an expert witness in chemical exposure cases related to benzene, isocyanates, gasoline, and other organic chemicals, among other substances, in over four hundred cases. Further, he indicates that he is a recognized expert in risk assessment.

[4] We note in his deposition testimony, Mr. Gardill discussed how fumes coming from Block 17 intensified when the rag layer on the MNB storage tank at the DNT Unit was removed by burning it. Mr. Gardill did not discuss what the rag layer was or how the process was performed as he did not know the details.

Standards" (1989), in which the human detection limits or odor thresholds of chemicals (such as benzene, MCB, and others) were listed. Mr. Petty also considered his interview with Mr. Gardill regarding his work duties, amount of time spent in jobs exposing him to fumes/odors and dermal contact from benzene and other chemicals, and some information from other workers at the Bayer plant. From this information, Mr. Petty concluded that Mr. Gardill experienced intense, frequent, and proximate exposure to benzene, such that a conservative estimate of Mr. Gardill's benzene inhalation exposure ranged from 20.7 to 64.0 PPM-YRS with a midpoint value of 42.3 PPM-YRS.[5] Mr. Petty also calculated a less conservative exposure estimate, using the higher odor threshold, of 21.3 to 660.0 PPM-YRS with a midpoint value of 239.8 PPM-YRS.[6] Mr. Petty also took into account Mr. Gardill's dermal exposures to benzene by considering the skin areas impacted, the percentage of time that a given area was wet, and the relative absorption factor for a given skin area. Mr. Perry calculated Mr. Gardill's occupational dermal exposure to benzene was 2.85 PPM-YRS. Mr. Gardill's combined dermal and inhalation exposures, Mr. Petty calculated, ranged from 23.5 to 66.9 PPM-YRS with a midpoint of 45.1 PPM-YRS; or, a less conservative estimate between 24.2 and 662.9 PPM-YRS, and a midpoint of 242.7 PPM-YRS. Finally, Mr. Petty calculated Mr. Gardill's non-occupational benzene exposure from smoking and derived an estimate of 1.51 PPM-YRS.

Lastly, Mr. Petty reviewed scientific, medical, epidemiological, and regulatory studies and other information regarding the health effects of benzene. Several of the studies reviewed by Mr. Petty were concerning for a causative relationship between benzene exposure and diseases including blood disorders, lymphoma, and lymphatic leukemia. Mr. Petty concluded that Mr. Gardill was exposed to chemicals, including benzene, while working for Bayer and that he was not provided with sufficient respiratory or dermal protection.

On March 9, 2025, Peter F. Infante, M.P.H., Dr.P.H., F.A.C.E., authored a report analyzing whether Mr. Gardill's occupational exposure to benzene was a significant contributing factor to his development of FL.[7] In rendering his opinion, Dr. Infante

---

[5] Mr. Petty explained that "[c]umulative benzene inhalation exposure estimates, in terms of PPM-YRS is simply the sum of time(s) [Mr. Gardill] was exposed to benzene-containing products (time defined in terms of work-years – 1 YR = an exposure year of 48 weeks for 40 hours/wk. = YRS of time) multiplied by the concentration of benzene in the air (ppm – parts per million)." Mr. Petty also noted that this calculation requires an estimate of the benzene concentration in the air and a determination of exposure time.

[6] Mr. Petty used the odor thresholds from *Industrial Hygiene and Toxicology*, by Frank A. Patty (1949), to calculate Mr. Gardill's benzene exposure from inhalation.

[7] According to his curriculum vitae, Dr. Infante received a Doctor of Public Health from the Department of Epidemiology in 1973 and previously served as an adjunct

considered whether occupational exposure to benzene can cause NHL and whether Mr. Gardill's exposure to the chemical was a significant contributing factor to his development of the disease. Dr. Infante noted that studies on the risk of NHL related to benzene exposure often lack quality information about the benzene exposure because the exposures often occurred decades before the cancer diagnosis. Dr. Infante also noted that FL is a type of NHL that is rarely studied as a separate entity because so few cases or deaths are identified in relation to specific exposures. However, Dr. Infante said that he reviewed Mr. Gardill's affidavit dated October 18, 2024, medical records, Mr. Petty's industrial hygiene report dated February 5, 2025, and other records in the case. Further, Dr. Infante reviewed numerous studies linking benzene exposure to blood disorders, NHL, and FL. According to Dr. Infante, among the few studies that evaluated the risk of benzene exposure and development of FL, scientists calculated a "statistically significant elevated risk as high as 7-fold." Among the studies Dr. Infante reviewed were some that he found supported an association between benzene exposure and FL. One particular study examined exposure to solvents and chemical mixtures that included benzene, toluene, and xylene (BTX) and the risk of developing FL. That study found that such exposure significantly increased the risk of developing FL, and the researchers concluded that benzene is the most likely chemical implicated in the development of the disease. Some other studies also showed a link between benzene exposure and an elevated risk of FL. Dr. Infante concluded that Mr. Gardill's benzene exposure exceeded the levels that studies showed were associated with elevated risk of developing NHL. Further, Dr. Infante found that Mr. Gardill's diagnosis of NHL was compatible with the latency period (between exposure to benzene and a diagnosis) presented in epidemiological literature. Although Mr. Gardill's smoking contributed to his development of NHL, Dr. Infante felt it was a minor exposure. Dr. Infante also ruled out familial association and idiopathic development of the disease and concluded that within a reasonable degree of scientific probability, Mr. Gardill's occupational benzene exposure was a significant contributing factor and the most likely cause of his development of NHL.

On March 11, 2025, Amit Mehta, M.D., a board-certified hematologist/oncologist, authored a report regarding Mr. Gardill's NHL diagnosis and his work exposure.[8] Dr. Mehta examined Mr. Gardill on January 8, 2025, and noted that following a stroke in July of 2021, an MRI scan revealed a 1.7 cm left parotid gland mass. A biopsy of the mass revealed FL, a type of NHL. After further evaluation, Mr. Gardill was diagnosed with Stage III FL. Monitoring showed lymph node masses increasing in size and Mr. Gardill was treated with chemotherapy, which he completed in January of 2024. In March of 2024, testing showed that Mr. Gardill was not in remission from the cancer, but the persistent

professor and professorial lecturer on environmental and occupational health. He now is a consultant on occupational and environmental health.

[8] Dr. Mehta indicates in his curriculum vitae, he is a physician who is board certified in hematology and oncology with expertise in hematologic malignancy.

lymphadenopathy was stable. Dr. Mehta reviewed Mr. Gardill's work history, the reports of Dr. Infante and Mr. Petty, and noted the published literature regarding the carcinogenic risk of benzene and its link to NHL. Dr. Mehta concluded that the risk of lymphoma posed by Mr. Gardill's smoking history was small when contrasted to his substantial occupational exposure to benzene; Dr. Mehta also noted he found no other discernible risk factors for the disease in Mr. Gardill's medical history. Dr. Mehta concluded that Mr. Gardill developed FL, an incurable cancer, as a result of his occupational exposure to benzene.

Bayer submitted the September 26, 2025, report of Anders Abelmann, M.S., Ph.D., CIH, challenging Mr. Gardill's evidence of exposure to benzene and other chemicals.[9] Dr. Abelmann, a certified industrial hygienist, reviewed Mr. Gardill's affidavit, deposition, medical records, employment records, and the reports of Drs. Mehta and Infante, Mr. Petty, and other records in the claim file, and published articles, government documents, and textbooks on industrial hygiene. Dr. Abelmann reviewed some employment records and found that Bayer provided safety training and respiratory protection to employees, although Mr. Gardill was observed not wearing proper protective gear while performing sampling. Dr. Abelmann noted that Mr. Gardill underwent personal air monitoring tests in 1988, 1990, 1991, 1992, and 1993, when he worked at the tank farm. In a table documenting the test results, Dr. Abelmann noted that the short-term sampling results showed that the concentration of benzene ranged from below the detection limit to 13.4 ppm, and the long-term sample results ranged from 0.036 ppm to 0.123 ppm. One sample tested for MDI was below the detection limit, and the other test detected 0.001 ppm MDI. Dr. Abelmann also noted that Bayer conducted regular air sampling for a variety of chemicals, and he identified a total of 257 personal samples collected for benzene (from workers other than Mr. Gardill) at the plant between October 1975 and May of 1982. Of the 257 personal samples, Dr. Abelmann determined that only six exceeded the permissible exposure limits or shorter-term exposure limits. Dr. Abelmann said that there was no information to suggest that the samples that exceeded the limits were relevant to Mr. Gardill's work. Dr. Abelmann also reviewed scientific literature to assess the potential relationship between Mr. Gardill's alleged exposures to benzene and other chemical mixtures and the development of NHL/FL. The conclusion Dr. Abelmann drew from his review is that the weight of scientific evidence did not support an association between Mr. Gardill's exposure and his development of NHL/FL. Although Dr. Abelmann acknowledged some studies suggested a relationship between benzene exposure and NHL, he found no support for the proposition that Mr. Gardill was exposed to high levels of the chemical or that studies showed a relationship between benzene and FL.

[9] Dr. Abelmann noted that he is a certified industrial hygienist with fifteen years of experience in industrial hygiene, exposure, and risk assessment. He said he has been involved in and led research, measurement, and risk assessment regarding exposures to a variety of chemicals. Dr. Abelmann holds a doctorate degree in public health science.

Bayer also submitted a report of Brent Finley, Ph.D., DABT, dated September 29, 2025.[10] Dr. Finley reviewed essentially the same reports and documents from the claim as were reviewed by Dr. Abelmann, and he reviewed multiple material safety data sheets (MSDS) for various chemicals and scientific literature. Dr. Finley found no causative link between FL and benzene exposure; thus, he concluded that benzene exposure did not cause Mr. Gardill's cancer. Dr. Finley based this conclusion on his review of epidemiological literature that he said was mixed – a few studies showing benzene exposure increased the risk for developing NHL, whereas other studies did not show such risk. Dr. Finley also differentiated between a risk of NHL versus FL, and said that most studies did not show an increased risk for FL. However, he noted that a few studies showed a significant increased risk for FL, but there were deficiencies in those studies. Further, Dr. Finley concluded that any occupational exposure to benzene experienced by Mr. Gardill was too low to cause the disease. Dr. Finley based his conclusions on the Occupational Safety and Health Administration's (OSHA) current permissible exposure limit, which is 1 ppm, and the short-term exposure limit of 5 ppm. Bayer's air sampling data and personal sampling, Dr. Finley noted, did not support a finding that Mr. Gardill's inhalation exposure exceeded OSHA levels. Similarly, Dr. Finley estimated that Mr. Gardill's dermal exposures, when standardized to a typical work year of 250 workdays per year, ranged from 0.001 to 0.016 ppm per year. Thus, Dr. Finley found this exposure would not have significantly increased Mr. Gardill's risk for FL. Finally, Dr. Finley cited some case studies and concluded that Mr. Gardill's smoking history was a major risk factor for developing FL.

The claim administrator issued an order dated May 16, 2025, rejecting the claim for NHL on the basis that there is no causal connection between Mr. Gardill's disease and his employment.[11] Mr. Gardill protested this order to the Board.

On December 11, 2025, the Board reversed the claim administrator's order and ordered that the claim be held compensable for NHL/FL. The Board found that Mr. Gardill established by a preponderance of the evidence that his occupational exposures to benzene while working at Bayer were more likely than not a contributing factor in his development of NHL/FL. Bayer now appeals the Board's order.

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

---

[10] Dr. Finley indicated in his curriculum vitae that he is a board-certified toxicologist with over thirty years of experience in conducting and managing risk assessments related to chemical exposures. Dr. Finley holds a doctorate degree in toxicology/pharmacology.

[11] The parties did not include the claim administrator's order in the appendices filed with this Court. However, the Board's order at issue in this case and the parties' briefing describes the content of the claim administrator's order.

> 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).

Bayer presents three assignments of error, and they will be addressed in turn. First, Bayer argues that the Board erred by conflating the etiology of non-Hodgkin lymphomas, generally, with the subtype of FL, despite scientific distinctions and the lack of a clear link between benzene exposure and FL. The subtypes of cancers under the NHL umbrella, Bayer argues, have materially different etiologies and relevant risk factors and are distinct diseases.

First, we note that the applicable statute governing the compensability of an occupational disease is set forth at West Virginia Code § 23-4-1(f) (2024), which provides:

> For the purposes of this chapter, occupational disease means a disease incurred in the course of and resulting from employment. No ordinary disease of life to which the general public is exposed outside of the employment is compensable except when it follows as an incident of occupational disease as defined in this chapter. Except in the case of occupational pneumoconiosis, a disease is considered to have been incurred in the course of, or to have resulted from, the employment only if it is apparent to the rational mind, upon consideration of all the circumstances: (1) That there is a direct causal connection between the conditions under which work is performed and the occupational disease; (2) that it can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment; (3) that it can be fairly traced to the employment as the proximate cause; (4) that it does not come from a hazard to which workmen would have been equally exposed outside of the employment; (5) that it is incidental to the character of the business and not

> independent of the relation of employer and employee; and (6) that it appears to have had its origin in a risk connected with the employment and to have flowed from that source as a natural consequence, though it need not have been foreseen or expected before its contraction[.]

We also note that West Virginia Code § 23-4-1(f) does not require a claimant to prove the conditions of their employment were the exclusive or sole cause of the disease, nor does it require a claimant to show that the disease is peculiar to one industry, work environment, or occupation. *See* Syl. Pt. 3, *Powell v. State Workmen's Comp. Comm'r*., 166 W. Va. 327, 273 S.E.2d 832 (1980).

We do not agree with Bayer's premise that the Board conflated the etiology for NHL with that of FL. Contrary to Bayer's assertions, the Board noted that Dr. Finley opined that no causative link existed between NHL/FL and benzene exposure, and that Dr. Abelmann only acknowledged a causal relationship between benzene exposure and NHL. However, the Board also noted that Mr. Gardill's experts concluded that studies had shown a causative link between benzene exposure and FL. Although the Board noted the conflicting opinions about whether benzene can cause FL, it found that Mr. Gardill met his burden of proof to show that benzene exposure is capable of causing NHL/FL. The Board based this finding upon the opinions of Mr. Petty, and Drs. Infante and Mehta. The Board noted that all of the experts of record cited "voluminous studies, scientific articles, and medical evidence" in support of their respective positions, that studies "pointed in both directions," and concluded that "it cannot be found that the evidence or data used by one expert is more credible or reliable than the evidence cited by the other." Resting on the opinions of Mr. Petty, and Drs. Infante and Mehta, whose credentials the Board found were impressive, the Board determined that the weight of the evidence supported a causal connection between benzene and NHL/FL. The Board disagreed with Bayer's assertion that the opinion of Dr. Finley, a trained toxicologist, should carry more weight than the opinions of Mr. Gardill's experts. Specifically, the Board did not agree that a toxicologist was the only type of expert qualified to offer a reliable, credible opinion on the subject. Thus, the Board concluded that a preponderance of the evidence supported a finding that benzene exposure is capable of causing NHL/FL. A review of the Board's order does not show that it conflated the etiology of NHL with the specific disease of FL.

We also note that the Board pointed out that Drs. Pollock and Mehta were the only two medical doctors to specifically opine that Mr. Gardill's NHL/FL was occupationally related. The Board also found that Dr. Mehta, who specializes in the diagnosis and treatment of blood cancers/lymphoma, was more qualified than any doctor of record to assess a causal connection between Mr. Gardill's occupational exposures and his disease. The Board disagreed with Bayer's assertion that the physicians were less qualified than Dr. Finley to comment on the etiology of the disease, and found that the opinions of Drs. Pollock and Mehta were more credible and persuasive than those of Drs. Abelmann and Finley. The fact that the experts disagreed about the significance of the available studies

did not, standing alone, prevent the Board from resolving that disagreement. We defer to the Board's determinations of credibility and weighing of the evidence. *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 [Board's] credibility determinations and inferences from the evidence . . . .").

In its second assignment of error, Bayer asserts that since there is no clear causal link between benzene and FL, the Board misapplied the framework set forth by the West Virginia Supreme Court of Appeals ("SCAWV") in *Powell v. State Workmen's Comp. Comm'r*, 166 W. Va. 327, 273 S.E.2d 832 (1980) and *Casdorph v. W. Va. Off. Ins. Comm'r*, 225 W. Va. 94, 95, 690 S.E.2d 102, 103 (2009). The framework set out by the SCAWV, Bayer argues, requires a "clear link" between a disease and a workplace hazard before a claimant may be found to have established a prima facie assumption of causation, which then requires an employer to disprove causation. Here, since Bayer alleges that no "clear link" is established, Mr. Gardill failed to establish a prima facie case. We disagree.

First, we dispense with any argument suggesting that a claimant in a West Virginia workers' compensation case must meet a higher burden of proof than the preponderance of the evidence standard in order to maintain a compensable disease claim. West Virginia Code § 23-4-1g provides that the "resolution of any issue raised in administering this chapter shall be based on a weighing of all evidence pertaining to the issue and a finding that a preponderance of the evidence supports the chosen manner of resolution." Also, under this statute, the Board is required to weigh the evidence and assess the "relevance, credibility, materiality, and reliability that the evidence possesses in the context of the issue presented." Then, the statute provides that "[i]f, after weighing all of the evidence regarding an issue in which a claimant has an interest, there is a finding that an equal amount of evidentiary weight exists favoring conflicting matters for resolution, the resolution that is most consistent with the claimant's position will be adopted." *Id*. Additionally, contrary to Bayer's argument that no causal link exists between benzene exposure and NHL/FL, the Board found such a link, and as noted above, we cannot find error in the Board's credibility determinations that led it to this finding.

Next, it is important to keep in mind the six factors provided in West Virginia Code § 23-4-1(f), discussed above. As to Bayer's contention that the Board did not follow the framework set out by the SCAWV in *Powell* and *Casdorph*, we disagree and instead find the present case to be remarkably similar to the facts in *Casdorph*. In *Casdorph*, the Court noted that the scientific evidence of a causal relationship between benzene and acute myelogenous leukemia ("AML") was greater than the evidence linking the chemical to chronic myelogenous leukemia ("CML"), which was the disease at issue in that case. The Court noted that the claimant had provided case studies demonstrating a statistical significance between exposure to high concentrations of benzene and CML, and also that the employer's experts did not find those studies to be persuasive. Also, the Court noted

that the trier of fact (the Office of Judges), whose decision the Board reversed, had found sufficient proof of a causal connection between benzene and CML, and that the claimant's benzene exposure was significantly greater than the general public's exposure to the chemical. Although in *Casdorph* the Office of Judges ultimately found the claimant's experts were more persuasive, it acknowledged there were contradictory opinions and noted that it was a close case. On appeal, the Court concluded that the claimant established the requisite statutory elements of West Virginia Code § 23-4-1(f) through his exposure history and the medical and scientific evidence. The Court reinstated the Office of Judges' order and ruled the claim compensable.

In the present case, we find the Board set about analyzing Mr. Gardill's case in the manner prescribed by the Court in *Casdorph* – by tracking the statutory elements set out in West Virginia Code § 23-4-1(f). We note that the *Casdorph* Court did not find the claimant's claim for CML was precluded even though the evidence was contradictory and weaker for showing a link between CML and benzene than the link between benzene and AML. The Board noted the contradictory expert opinions and evidence, and it based its decision on the experts' credibility, reliability, and persuasiveness. Ultimately, the Board found Mr. Gardill's experts were more persuasive than Bayer's. Notably, the Board found that Mr. Petty, and Drs. Infante and Mehta provided evidence of a causal relationship between benzene exposure and FL. Although Bayer argued that the Board should give Dr. Finley's opinion greater weight than the other experts merely because he is a toxicologist, the Board declined to do so. The Board noted that Mr. Gardill's experts also held impressive credentials in their respective fields. In the end, the Board did not "elevate" or give extra weight to an epidemiology opinion, for instance, over that of a toxicology opinion solely by virtue of the particular scientific field. Instead, the Board reviewed each expert opinion and the basis for that opinion, in order to decide the credibility, reliability, and persuasiveness of each expert. Further, the Board also noted the conflicting evidence as to the frequency and intensity of Mr. Gardill's benzene exposure and determined that the analysis offered by Mr. Petty was more credible because the opinions of Drs. Abelmann and Finley rested in large part upon air sampling data and only six personal air samples.[12]

The Board determined that the opinions of Drs. Abelmann and Finley did not offer credible evidence that Mr. Gardill's occupational benzene exposures were of insufficient

[12] The Board found that the opinions of Drs. Abelmann and Finley relied on only general air sampling data (with no indication that the sampling was representative to Mr. Gardill's actual exposure on the dates in question) and only six personal monitory samples taken from Mr. Gardill over his forty-year career at Bayer. Further, the Board noted that Bayer's sampling did not take into consideration dermal contact exposures to the chemical. Finally, the Board noted that Mr. Gardill's testimony about frequent dermal contact was unrefuted. Thus, the Board determined that the data that Drs. Abelmann and Finley relied upon did not offer credible proof that Mr. Gardill's benzene exposure lacked sufficient frequency or intensity to cause NHL/FL.

frequency or intensity to cause NHL/FL. The Board stated the following reasons for this conclusion: 1) only six personal samples were taken over the course of Mr. Gardill's forty-year employment; 2) there is no indication that the other air sampling data was representative of Mr. Gardill's actual exposure on the sampling dates; 3) the air sampling data did not account for Mr. Gardill's dermal exposures; and 4) Mr. Gardill's testimony regarding his frequent dermal and direct contact with benzene is unrefuted. Additionally, the Board noted that Dr. Pollock, Mr. Gardill's treating physician, and Dr. Mehta, Mr. Gardill's hematological oncologist, were the only two medical doctors of record to specifically opine that the etiology of Mr. Gardill's NHL/FL was linked to his occupational exposure. The Board concluded that the opinions of Drs. Pollock and Mehta were more credible and persuasive than the findings of Drs. Abelmann and Finley.

In sum, the Board's decision rests on its findings of the persuasiveness, credibility, and reliability of each expert's opinion. As we previously stated, we give deference to the Board's credibility determinations, and discern no reversible error in the Board's ruling in this regard.

In its third and final assignment of error, Bayer contends that the Board erred by "improperly shifting the burden" and requiring it to disprove general and specific causation.[13] Bayer notes that it argued to the Board that Mr. Gardill's lack of a toxicology expert precluded him from establishing a causal relationship between NHL/FL and benzene exposure. The Board, Bayer alleges, instead concluded that its lack of an epidemiologist was dispositive in disproving general causation and it relied on Mr. Gardill's experts' "bloated theoretical estimates" of benzene exposure. We disagree.

Bayer argued to the Board that it should give Dr. Finley's opinion the greatest amount of evidentiary weight than any other expert because he is a trained toxicologist. The Board responded to this argument and said it was not persuasive because, while there were no other toxicological experts of record to refute Dr. Finley, Bayer did not offer epidemiological or hematological reports to refute Drs. Infante and Mehta. The Board did note that Mr. Petty and the other experts had impressive credentials in their respective fields, and it did not find that an opinion by any one specialty was dispositive of the issue. Instead, the Board judged the credibility, reliability, and persuasiveness of each expert opinion on its own merits. The Board emphasized that the opinions relied upon by Bayer were flawed and failed to take into account all of Mr. Gardill's exposure.

---

[13] Bayer describes a burden shifting approach enunciated in the *Powell* and *Casdorph* cases. However, neither case discusses the shifting of the burden of proof. On the other hand, both cases state that while a claimant has the burden of proof in an exposure claim, "W. Va. Code § 23-4-1 does not require a claimant to prove that the conditions of his employment were the exclusive or sole cause of the disease nor does it require the claimant to show that the disease is peculiar to one industry, work environment, or occupation." Syl. Pt. 3, *Powell*.

We find no reversible error in the Board's order in this regard, and we do not find that the Board improperly shifted the burden to Bayer. The Board reviewed the evidence and provided detailed reasons why it viewed the opinions of Mr. Gardill's experts as more credible than the opinions of Bayer's experts. The Board's findings are also congruous with the holdings in *Powell* and *Casdorph*.

Ultimately, we conclude that Bayer has not shown that the Board was clearly wrong in finding that Mr. Gardill established that his occupational benzene exposures at Bayer were more likely than not a contributing factor in his development of NHL/FL. 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 order, which rejected the claim.

Accordingly, we affirm.

Affirmed.

ISSUED: November 10, 2026

CONCURRED IN BY:

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