

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: February 14, 2020

CLAIM NO. 201464030

LEWIS ALLEN WILLIAMSON

PETITIONER/
CROSS-RESPONDENT

VS.

**APPEAL FROM HON. JANE RICE WILLIAMS,
ADMINISTRATIVE LAW JUDGE**

MOREHEAD STATE UNIVERSITY

RESPONDENT/
CROSS-PETITIONER

and HON. JANE RICE WILLIAMS,
ADMINISTRATIVE LAW JUDGE

RESPONDENT

**OPINION
AFFIRMING**

* * * * *

BEFORE: ALVEY, Chairman, STIVERS and VACANT, Members.

STIVERS, Member. Lewis Allen Williamson (“Williamson”) appeals, *pro se*, and Morehead State University (“Morehead”) cross-appeals from the July 29, 2019, Opinion and Order Dismissing Williamson’s claim for benefits and the August 19,

2019, Order ruling on Williamson's petition for reconsideration of Hon. Jane Rice Williams, Administrative Law Judge ("ALJ").¹

It is, admittedly, challenging for this Board to determine what Williamson argues on appeal. Therefore, we will set forth the substantial evidence in support of the ALJ's ultimate decision to dismiss Williamson's claim for benefits.

On cross-appeal, Morehead asserts the Court of Appeals' determination that this case falls within the jurisdiction of the Board of Claims mandates the ALJ should have dismissed Williamson's claim for lack of jurisdiction. The second section of Morehead's brief is not an argument but, rather, addresses why the evidence does not compel a different result than that reached by the ALJ.

The Form 102-OD in the record, filed on December 12, 2014, alleges Williamson sustained work-related asbestosis, while in the employ of Morehead, culminating on April 30, 2010, when he "could no longer work at nursing due to the pain and shortness of breath."

On March 27, 2015, Williamson filed a "Motion to correct form 102 and update forms" in order add the additional diagnoses of "lung disease and COPD." On April 1, 2015, Williamson filed an amended Form 102-OD alleging he sustained work-related asbestosis, lung disease, and COPD culminating in August 2007 while in the employ of Morehead. By order dated April 15, 2015, Hon. Otto Daniel Wolff, Administrative Law Judge ("ALJ Wolff") sustained Williamson's motion.

¹ Williamson's counsel withdrew on May 11, 2015.

On July 1, 2015, Williamson filed another motion to amend his Form 102 in order to add “Inflammatory Pleural Plaque Disease, Syncope/Sequel to inflammation.”²

On August 12, 2015, Williamson filed another motion to amend his Form 102 in order to add the following: “asbestos-induced pleural disease, COPD with Asthma overlap syndrome, whole body asbestos saturation inducing generalized inflammation with multi-organ involvement (definition = swelling, pain, and generalized loss of function due to inflammatory process.” By order dated August 10, 2015, ALJ Wolff sustained Williamson’s motion.

Williamson was deposed on February 13, 2015. He testified extensively concerning the types of jobs he had previously performed before his employment at Morehead. He worked as a mechanic at Ward Chevrolet. He also worked for Superior Brick Company in Florida engaging in cement work. Many of his other jobs entailed carpentry, plumbing, and construction. He testified, in part, as follows:

Q: Do you remember the names of any of the contractors you worked with?

A: Richard Senter.

Q: Is that with an S or a C?

A: S-e-n-t-e-r.

Q: And what did Richard Senter do?

A: A lot of guttering work. Putting gutters on houses. And we did some painting, too. And tree trimming.

Q: And others?

² The Board was unable to locate an order granting Williamson’s third motion to amend.

A: Dale Lambert Construction.

Q: Okay. And what did you do there?

A: General Labor. I did carpentry work, did concrete work. We excavated several basements. And also I can remember a couple of roofs that we did. One we tore off the old one and put a new one on, and then another one we tore the whole top off the house and put a new one on.

Q: Do you remember any others?

A: That's all I remember.

Williamson began working in the nursing profession in 1992. His work at Morehead as a multimedia lab coordinator began in August of 2004 and continued until August of 2007. He described his job duties as follows:

A: Well, we had from 300 to 400 computer teaching programs that I was in charge – whenever a student needed help or if a class needed to be instructed on that media, I had to set it up and do the instructions.

I also- after a year, they decided that I did a better job teaching dosage calculation than the classrooms did, so they sent me every student in the program for dosage calculations. I taught it to them and I also did all the testing on them, and it was a hundred percent record score. And I have a signed letter to that effect from Janet Gross, who was part-time director.

...

A: But I'd like to add. Like I said, it morphed into much more. The Morehead job description has a line at the – I believe it's the last line that says, 'And other duties as assigned.'

Q: Okay.

A: My boss took that very literally, and so I became also pretty much – since I was the only man in the department, that when something needed to be moved, an extension cord needed to be run through the ceiling or a computer

line that they didn't want to have to pay IT to run, I got to run it.

Also, I had to drill holes and install stuff, where – she had little projects like bulletin boards, the movement of equipment, drill holes for anchors for stuff, pretty much everything that she needed done, and everybody there saw it.

Q: What building was this in?

A: Mostly Reed Hall, but I also had – I remember they called me to many other buildings. IT could not install some of the teaching programs, so they called me and I went and I run [sic] wires and actually installed the testing programs on the computers in various labs throughout the university.

Then when it was over – because they couldn't uninstall them, either – you can't leave testing programs on the computer – I had to go back and uninstall them because IT couldn't figure out how to do it.

Williamson recounted how he believes he was exposed to asbestos:

Q: Now, is – is that how you believe that you were exposed to asbestos, the drilling of the holes to put in the IT equipment?

A: Well, drilling holes, crawling around in the ceilings. There was a – now, when I backed up and investigated after I realized I had asbestosis, I realized that they had to remove all of the insulation around the steam pipes, and most of that work was done in the ceilings.

And I remember when I was crawling around the ceilings there was an awful lot of dust up in there, running wires and whatnot. So logic would suggest that some of that was still there from the removal of the previous asbestos.

Also in my research, I've come up with – there are literally – what all – what they all say is in buildings constructed before –

...

A: Also, there was a lot of buffing. I came in early to prepare my lab. It was unpaid work, but I was there early. And the janitors were going through buffing the floor – I don't know what their schedule was – two or three times a week. I do know that raised quite a bit of dust.

Also, there was steam-pipe breakage twice I can recall, and that dripped down into my lab to where I had to go to Walmart and buy plastic sheeting and cover everything. And I was pretty much the person who cleaned those situations up.

Q: So as far as – as far as actually knowing if asbestos was present, you don't actually know if it was present; you're assuming based on your research?

A: Well, I don't know because Morehead, who had the responsibility to test, didn't test, as I – as I'm ever aware of. They did air tests, but I don't think they ever did materials tests.

In fact, an email to – from Holly Niehoff, who was in charge of that here, mentions that in 19 and- no- 2003, the roof was removed -

Williamson first started experiencing symptoms of what he believes to be asbestosis in 2008 or 2009. He went to California to receive medical treatment there.

He explained:

A: And I went to the physicians there. We were friends, and so they treated me off the record. Their assumption was that the shortness of breath was being caused by the heart pain, because when you get heart pain, you get short of breath.

I was also getting infections quite often. I was taking Cipro a month at a time probably three times a year. And I couldn't really get a lot of relief. And so I – when my contract came up for renewal, I told them I had – for health reasons, I have to take a couple months off, and I did. I could not get it resolved. And I went from there to Florida. It eased up, and that's why I went back to work the first of 2010.

...

Q: So the first time that you ever really remember experiencing the shortness of breath, at least to the point that it was –

A: It was causing heart pain.

Q: - annoying to you-

A: Yeah.

Q: - was in 2008 or 2009?

A: Yes.

Williamson has not worked since 2010.

Williamson did not testify at the final hearing.

A *voluminous* amount of medical evidence was filed in the record. For the sake of brevity, we will only summarize the most pertinent to this appeal.

Williamson filed the September 26, 2014, questionnaire completed by Dr. Ayesha Sikder. Relevant to this appeal are the following questions and answers:

3. Is it your opinion that Mr. Williamson [sic] current lung condition is due to asbsotos?

[Dr. Sikder checked “yes” and handwrote the following: “Has asbestos plural plaques.”]

4. Is it your opinion that his current lung conditions were brought on by exposure to asbestos while working with Morehead State University?

[Dr. Sikder checked “yes” and handwrote the following: “Asbestos pleural disease is usually caused by occupational exposure. His exact work site however cannot be verified by us.”]

5. Do you believe that this patient has suffered true work related injuries to his lungs?

[Dr. Sikder checked “yes” and handwrote the following: “Pleural plaques are caused by inhalation of asbestos for years.”]

Dr. Sikder was deposed on May 21, 2015. Dr. Sikder explained why she diagnosed COPD and not asbestosis:

A: No. If you look at the CAT scan reports there is no asbestosis reported. So the basis of the diagnosis is pulmonary fibrosis which is not seen in the CAT scan, so we can't really say this is asbestosis.

Q: So you don't make that diagnosis?

A: No.

Q: And if I understand the medicine behind this, Doctor, and I didn't sleep at a Holiday Inn last night either, so you'll have to pardon me, but the presence of pleural plaques is not synonymous with asbestosis, is it?

A: Asbestosis actually causes several phenomenon in the lung. You can have like an asbestosis pleural effusion, you can have mesothelioma which is the worst scenario, you can have asbestosis, you can have lung cancer, you can have pleural plaques. So these are the five, there's actually six skipping my mind now. Asbestosis is fibrosis in the lung, or evidence of scarring in the lung. That has to be seen in either the chest x-ray or in the CAT scan. So that was not evident in the CAT scan. The pleural plaque, yes, is one of the manifestations of asbestos exposure.

Q: And pleural plaques are generally benign, is that true?

A: They are not reported in the literature to turn into malignancy.

Q: In fact, I saw in one of the CT scans which reported the presences of the pleural plaque, that those were benign findings and did not need further follow-up, is that right?

A: Usually that's what the nature of the pleural plaque is.

Concerning the contraction of asbestosis, Dr. Sikder testified:

Q: The development of asbestosis requires the inhalation of friable asbestos dust, is that right?

A: Right.

Q: Do you know what size those particles have to be?

A: That right now is skipping my mind, but, you know –

Q: That's fine.

A: - some are more profibrotic than others.

Q: It does require either long-term exposure or intense exposure over a shorter period of time to asbestos dust before asbestosis or symptoms from asbestosis or the pleural plaques arise, is that correct?

A: Yes. Most of the studies though are done on patients who have been exposed for a long time. So the short-time intense exposure, for example the World Trade Center catastrophe, there has still not been any reported in the literature as intense short-term exposure. The [sic] most of the cases we see in clinical practice is [sic] long-term occupational exposure.

Q: And of course the World Trade Center collapse was going to be fourteen years ago now, is that right?

A: Right.

Q: And you're saying that they still don't see any asbestosis arising from that?

A: And you probably are familiar with it, asbestos lung disease is rarely seen before fourteen years. Mesothelioma appears forty years. So we usually use ten, twenty, thirty, forty. And that's how [sic] the extent we see of the disease.

Q: In fact, isn't it true, Doctor, that the best studies show that for the development of symptoms and the development of pleural plaques, that usually takes at least twenty to thirty years after the exposure?

A: Twenty to thirty is what is quoted mostly in the literature. It also says you may see it up to fifteen years, as early as fifteen years and as late as forty years, but medium is twenty to thirty years.

Q: In this particular case, Doctor, Mr. Williamson has alleged exposure to asbestos dust while he worked at Morehead State between 2004 and 2007. He has testified that his symptoms of shortness of breath arose in 2008. We have the CT scan that in May of 2012 suggested the presence of pleural plaque. Considering what you just told us about the time line for the development of symptoms, asbestosis, and pleural plaques, it's not within the realm of reasonable medical probability, is it, doctor, to believe that the pleural plaque or the symptoms of shortness of breath arose due to any exposure between 2004 and 2007?

A: If that's the time period, 2004 to 2007, then it would be unlikely because the pleural plaque takes at least – I mean even if the shortest is ten years, it takes longer than that.

Q: And for them to be calcified, does that take longer?

A: Yes.

Q: And this was calcified, wasn't it?

A: This was calcified, yes.

Q: So you would agree with me that it's likely that the exposure that caused the pleural plaques was before 2004?

A: Statistically that would be the higher probability.

Q: And that would be your testimony then, within the realm of reasonable medical probability?

A: Uh-huh (yes).

Dr. Sikder reviewed three x-rays and two CAT scans, and none of them revealed asbestosis. She testified as follows:

A: The only finding that was there was the pleural plaque.

Q: Okay. What is it on x-ray that you look for to make the diagnosis of asbestosis when you do?

A: Asbestosis has some characteristic presentation, which most of the time it's fibrosis, but we may also see nodules in the lung.

Q: Do you see those on CAT scans when present?

A: Yes. It's actually, CAT scans is the gold standard for diagnosis.

Q: The fibrosis and/or nodules were not seen by you on either the x-rays or the CT scans, is that right?

A: Yes.

Q: Does the x-ray show the pleural plaque?

A: X-rays can show pleural plaque. His is posterior medial, so I think a chest x-ray would have missed it.

Q: Okay. Doctor, the fact that Mr. Williamson has the pleural plaques now, and going back to our time line, that would suggest, would it not, that it was sometime back in the 1990s or maybe in the 1980s even that he had the exposure that led to the development of the plaque?

A: According to the literature, yes, that would be prior.

...

Q: Doctor, based upon all the testimony that you have given today thus far, would I be correct that you are not in a position, within the realm of reasonable medical probability, to ascribe the presence of any lung condition to Mr. Williamson's work between 2004 and 2007?

A: You know, there is the question of COPD. He does have COPD which is evidenced in the PFT. His FEV1 is in the sixty percent range. Sixty percent once in April and then in September or August it was sixty-three percent, maybe the other way around, but it was sixty percent about. And looking at his history that he had never smoked and he had some occupations, I would say that

probably is related to his occupational exposure. So he has COPD. It's mild. And it's most likely is [sic] associated with occupational exposure.

Q: And what occupational exposure are you addressing?

A: The occupational exposure that he gave me is that he worked in construction for twenty years, and then worked as a janitor for forty years. He drove a coal truck for four and a half years. He also worked as a nurse. So most likely this is due to the construction exposure. Now as a janitor I'm not sure what he got exposed to, but that is not considered a high risk in our literature.

Dr. Sikder addressed the inconsistencies between her report and her deposition testimony, specifically with respect to causation, explaining as follows:

Q: You have indicated on Number 3 that Mr. Williamson's current lung condition is due to asbestos, you've indicated yes. And by current lung condition you specifically mean the presence of pleural plaques, is that right?

A: Yes, yes.

Q: Now the answer to Number 4 I think is somewhat problematic in light of what you've testified before, because I think you've testified, have you not, Doctor, that there has not been sufficient time once you know what the time line is for any pleural plaques to develop if we assume, and I'll ask you to assume, that Mr. Williamson worked at Morehead State between 2004 and 2007, his symptoms arose in 2008, according to his testimony, and there is a CT scan from May of 2012 that shows calcified plaques?

A: Yes. It's certainly problematic. But if you look at my history, I've got many years of history. I've got history of construction work for twenty years, roofing between 1968 to '84. So which one of those – or doing [sic] a janitor for forty years. Which one of those, I don't know. I mean here I don't say it's caused by one place because I can't really.

Q: Well, actually in question Number 4 I think you do and that's why I wanted to make sure you understood, and I think you've already answered this through your testimony and corrected this really, and I just want to make sure that I'm correct in that, that you have testified that once you know what the true chronology is, and that is he worked for Morehead State from 2004 to 2007, symptoms arose in 2008 and we have a CT scan from May of 2012 that shows a calcified plaque, you would agree with me that the exposure at Morehead State, if there was any between 2004 and 2007, could not be responsible on the basis of asbestosis for either of those symptoms or the pleural plaques?

A: It would be highly unlikely. And if you are talking about three years of exposure, that would also make it highly unlikely.

Q: And by highly unlikely, you mean within the realm of reasonable medical probability, is that right?

A: Correct.

Williamson filed a Form 108, dated July 28, 2015, completed by Dr. Rodrigo Cavallazzi, a board-certified pulmonary specialist at the University of Louisville. After performing a physical examination and a medical records review, Dr. Cavallazzi diagnosed "Asbestos-induced pleural disease (pleural plaque). Asthma/COPD overlap syndrome." Regarding causation, Dr. Cavallazzi opined as follows:

Pleural plaques have a time-response and dose-response relation to asbestos exposure. I believe the exposure at Morehead State University contributed to the causation of the pleural plaque. However, it should be noted that prior exposure (before his job at Morehead) may also have contributed since it is known that there is a long latency period between asbestos exposure and development of pleural plaques. As an example, the American Thoracic Society statement informs that 'pleural plaques are indicators of exposure' to asbestos and that 'they are rare within less than 20 years' of

duration from first exposure [citation omitted]. The latency period from the first exposure at Morehead to the diagnosis of pleural plaque in the plaintiff is 17 years, accounting for the time he was there as a student and work study employee.

I believe the asthma/COPD overlap syndrome has been in part caused by asbestos exposure at Morehead State University. There is limited amount of medical literature implicating asbestos as a cause of airway obstruction. Perhaps the most important study was published in 1994 and included 8,720 asbestos-exposed construction and shipyard workers in the United States. Non-smokers exposed to asbestos had lower FEV1 and FVC as compared to non-asbestos exposed subjects; however, the magnitude of the difference was not substantial and there was not statistical significance. Asbestos exposed individuals had on average 0.141 lower FEV1 than the predicted. If we added this amount to the plaintiff's FEV1, it would increase from 2.11 to 2.251 (63% to 67%). The study also showed that the asbestos exposed individuals had a percent predicted FEV1 that was 4% lower than non-asbestos exposed individuals. [citation omitted].

Dr. Cavallazzi assessed a 17% whole person impairment rating, opining as follows: "The amount of lung impairment that I attribute to asbestos exposure is 4%."

Dr. Cavallazzi testified by deposition on June 7, 2016. Dr. Cavallazzi examined Williamson on June 18, 2015, at the request of the Department of Workers' Claims. He testified what the presence of pleural plaque can signify:

Q: Okay. Doctor, we're going to be talking about the existence of a pleural plaque in this particular case. The existence of a pleural plaque is not synonymous with the disease of asbestosis, is it?

A: You're correct.

Q: From what I read in your report and what I read in other places, would you agree that it generally takes at

least 20 or more years for a pleural plaque to develop after the exposure to as – friable asbestos fibers?

A: Yes. In general it takes a number of years, and 20 sounds about right.

Q: Wou – and would that especially be true, Doctor, in the case of a calcified pleural plaque?

A: Yes. I mean, you know, in general it takes a number of years. That is in my report.

His diagnosis of Williamson is “asthma-COPD overlap syndrome.”

Dr. Cavallazzi was asked about the timeline of Williamson’s symptoms with respect to his employment at Morehead:

Q: I’d like for you to assume that he worked at Morehead State from 2004 to 2007 or ‘9 –

A: Okay.

Q: -where he alleges that he was exposed to asbestos dusts. The record shows that he complain – started complaining of complaints in 2008, and we have the CT scan, which I think you’ve had the opportunity to review, that demonstrates a calcified pleural plaque in 2012.

Now, based upon all your testimony thus far, you would agree that that timeline, assuming it to be true, would not support a finding that the pleural plaque could be tied to the employment from 2004 to 2007 or ‘8?

...

A: Okay. I think the timeline is shorter than what one would normally expect. I think you’re right in that this time frame is shorter than what you’d generally expect. I don’t think I can rule out that this exposure contributed to his symptoms and to his small-airway disease.

I also want to point out that – and I’m not sure this is – that he was also exposure [sic] from 1995 to 2002 as a student.

...

Q: And that's why I framed the question and I asked you to assume the facts that I gave you. And if I understand what you're telling me is, is that it is unlikely that the calcified pleural plaque would be traceable to that period of employment because the timeline just doesn't fit.

A: I think there is a lot of potential for his prior exposure before 2004, 2008 to have contributed to the pleural plaque.

Q: In – in fact, if he had worked in construction and had done some roofing and maybe was exposed to asbestos dust 20 years before, that would fit much better with this timeline, wouldn't it?

A: It – it's hard for me to say – to partition, say how it was, that exposure, not this exposure. I think they all contributed.

Q: We can pretty well, though, Doctor, can't we, because of this timeline, rule out that exposures in 2004 to 2008 caused this calcified pleural plaque that was found in 2012?

A: I don't think you can rule out, I think that there's a lot of potential for exposure prior to that period to have contributed to that pleural plaque.

Q: Is – is there any literature that you can point me to, Doctor, that would show that a calcified pleural plaque can arise in – in five or six years?

A: I mean, this is medicine. I mean, you – you know, it – on average they – they arrive after a number of years, but this is medicine. It's not – so, there is a variation –

...

Q: - but I – I guess what I'm asking you: Is there any literature out there that would support a finding of calcified pleural plaques arising after six years?

A: Like I told you, there is a variation, because this is a biological response. On average, it's 20 years, but people respond differently. There is a variation.

Dr. Cavallazzi clarified Williamson does not have asbestosis but, rather, small-airway disease.

Williamson filed the August 6, 2015, questionnaire completed by Dr. Humberto Chio of the Cleveland Clinic in which the following questions and answered are reflected:

1. Does Mr. Williamson have asbestos pleural plaque disease? [circled "yes"]
2. Does Mr. Williamson need urine, blood or other body fluid tests to confirm the systemic presence of asbestos in all his body? [circled "no"]
3. Was Mr. Williamson's condition likely occupational? [handwritten: "I cannot determine that with certainty."]
4. Is Mr. Williamson likely to develop further asbestos effects/plaques? [circled "yes"; handwritten: "More pleural plaques can develop in the future."]
5. Is there any doubt that asbestos caused his pleural plaque? [circled "no"; handwritten: "However, it is still an assumption. Pleural plaques are typically caused by asbestos exposure."]
6. Is Mr. Williamson's COPD likely caused or worsened by asbestos? [nothing circled; handwritten: "I cannot determine that with certainty."]

By order dated March 11, 2016, ALJ Wolff bifurcated the claim for a determination of Williamson's entitlement to indemnity and medical benefits.

The May 20, 2019, Benefit Review Conference ("BRC") Order and Memorandum lists the following contested issues: benefits per KRS 342.730, work-relatedness/causation, notice, unpaid or contested medical expenses, injury as defined

by the ACT, and vocational rehabilitation. Under “Other” is the following: “Whether Π suffers ID from injurious exposure to asbestos while working for Morehead, jurisdiction, Effect of June 8, 2016 Memorandum.”

In the July 29, 2019, Opinion and Order, the ALJ set forth the following findings of fact and conclusions of law:

A. Jurisdiction.

KRS 342.690 states:

If an employer secures payment of compensation as required by this chapter, the liability of such employer under this chapter shall be exclusive and in place of all other liability of such employer to the employee...

Defendant’s position on this issue is that pursuant to KRS 44.070, jurisdiction for claims against the Commonwealth of Kentucky for injury relating to asbestos exposure lies exclusively with the Board of Claims. Defendant’s witness list sets out its argument that Plaintiff asserts he sustained an injury due to his alleged exposure to asbestos while employed by MSU. He filed suit in three separate tribunals – Rowan Circuit Court, the Board of Claims, and the Kentucky Department of Workers’ Claims. MSU moved for dismissal of the Rowan Circuit Court case, C.A. No. 15-CI-90186. Rowan Circuit Court granted MSU’s motion for dismissal, stating specifically that the Board of Claims had exclusive jurisdiction over claims arising from Asbestos exposure. Plaintiff appealed. While this matter was pending on Claimant’s interlocutory appeal in this workers’ compensation claim, the Court of Appeals issued its ruling:

This case falls squarely within the purview of KRS 44.070(1), as the only damages Williamson requests are purportedly the result of his alleged asbestos exposure at MSU...KRS44.070(1) on its face applies to [any] claim...for damages sustained as the result of exposure to asbestos...Because

MSU's sovereign immunity was waived to the extent that those claims must be raised before the Board of Claims.

Defendant argues that the Court of Appeals in a case with the identical parties and the same allegations of injury due to alleged exposure to asbestos found specifically that the Board of Claims had exclusive jurisdiction over this case. It further argues that pursuant to the principle of *res judicata*, the opinion of the Court of Appeals [sic] is [sic] dismissal bars further litigation of the matter. The doctrine of *res judicata* operates to bar subsequent proceedings in a workers' compensation case if the earlier proceedings fully litigated the claim. *Woodbridge Inoac, Inc. v. Downs*, 864 S.W.2d 306 (Ky. App. 1993). In *Whitaker v. Cecil*, 69 S.W.3d 69 (Ky. 2002), the court noted the doctrine of *res judicata* does not act as a bar in a subsequent proceeding if the issues or questions of law are different.

The other legal theory to be considered *Inman v. Inman*, 648 S.W. 2d 847, 849 (Ky. 1982) the Supreme Court instructed as follows:

The law-of-the-case doctrine is a rule under which an appellate court, on a subsequent appeal, is bound by a prior decision on a former appeal in the same court and applies to the determination of questions of law and not questions of fact. "As the term 'law of the case' is most commonly used, and as used in the present discussion unless otherwise indicated, it designates the principle that if an appellate court has passed on a legal question and remanded the case to the court below for further proceedings, the legal questions thus determined by the appellate court will not be differently determined on a subsequent appeal in the same case. Thus, if, on a retrial after remand, there was no change in the issues or evidence, on a new appeal the questions are limited to whether the trial court properly construed and applied the mandate..."

A critical difference with the applications of *res judicata* and “law of the case” when applying to the case at bar is that the Court of Appeals has not considered the issue of jurisdiction in this workers’ compensation claim. When the Court of Appeals in Williamson’s Rowan Circuit Court case state “this case falls squarely within the purview of KRS 44.070(1),” and found the Board of Claims had exclusive jurisdiction in the matter, it referred to the Rowan Circuit Court claim as that was the only claim before it. Nothing extends the dicta in that claim as controlling in this workers’ compensation matter. Employees of state universities certainly are not required to first take their injury claims before the Board of Claims nor does sovereign immunity bar claims for work injuries to employees of state universities.

It is found herein that this ALJ has jurisdiction over Williamson’s claim for injury while working for MSU.

B. Effect of a June 8, 2016 memorandum.

Plaintiff has requested to include “Effect of the June 8, 2016 memorandum” as a contested issue. This June 8, 2016 Order set aside ALJ Wolff’s March 11, 2016 Order and placed the claim in abeyance. Although not noted in the June Order, in a Motion to Clarify filed by Plaintiff on June 13, 2016, he notes he had requested to change the date of the conference due to undue stress on claimant. He noted he was having blood sugar issues and was not capable of driving. He stated he was on pain killers and at a diminished capacity. These health issues along with the ongoing Rowan Circuit Court action on the same issues weighed heavily in the decision to place the claim in abeyance.

A review of the March 11, 2016 Order of ALJ Wolff show [sic] the following:

Defendant’s Motion to Dismiss was Overruled;
Plaintiff’s Motion for Interlocutory Relief was Overruled;
Plaintiff’s Motion to Compel Discovery was Overruled with only a few exceptions;
Defendant’ Motion for Extension to respond to the Discovery was Sustained;
Plaintiff’s Motion to retain and deliver all Claim Records was Overruled;

Plaintiff's Motion for Cause to Re-depose Dr. Sikder was Overruled;
Plaintiff's Objection to Deposition of Dr. Cavallazzi was Overruled.

Plaintiff argues in his brief that "Judge Wolff already made findings and conclusions of law on all listed issues" and, thus, these issues are barred from further consideration. Williamson apparently believes ALJ Wolff made findings and final rulings on the merits simply by overruling a motion to dismiss, for example. No findings or conclusions of law have been found.

In the March 11, 2016 Order, when ruling on Defendant's Motion to Dismiss, ALJ Wolff stated "More than ample proof, including proof having statutory-mandated presumptive weight, is contained in the record indicating Plaintiff has incurred a work-related occupational disease injury due to his exposure to asbestos while working for Defendant. Defendant has presented expert medical evidence challenging the input of Dr. Cavallazzi." Then under the section titled "Discovery," ALJ Wolff stated, "So as to facilitate a more rapid conclusion of plaintiff's entitlement, if any, to indemnity and medical benefits, the KRS 342.165 safety violation issue is bifurcated from the present litigation of this claim, but will be addressed, if appropriate, after determining the basic questions of indemnity and medical benefits." No decision had been made by ALJ Wolff on the merits of this case, but simply a determination that the evidence was sufficient to move forward with discovery. Furthermore, ALJ Wolff denied the request of Plaintiff for interlocutory relief in the form of indemnity and medical benefits. Had ALJ Wolff made a decision on the merits, Plaintiff would have been awarded interlocutory relief.

C. Work relatedness/causation; Whether Plaintiff suffers occupational disability from injurious exposure to asbestos while working for Morehead State University; Injury as defined by the Act.

Pursuant to KRS 342.0011(3), an occupational disease: shall be deemed to arise out of the employment if there is apparent to the rational mind, upon consideration of all the circumstances, a causal

connection between the conditions under which the work is performed and the occupational disease, and which can be seen to have followed as a natural incident to the work as a result of the exposure occasioned by the nature of the employment and which can be fairly traced to the employment as a proximate cause. The occupational disease shall be incidental to the character of the business and not independent of the relationship of employer and employee. An occupational disease need not have been foreseen or expected but, after its contraction, it must appear to be related to a risk connected with the employment and to have flowed from that source as a rational consequence.

Medical causation must be proved to a reasonable medical probability with expert medical testimony . . . [however], [i]t is the quality and substance of a physician's testimony, not the use of particular "magic words," that determines whether it rises to the level of reasonable medical probability, *i.e.*, to the level necessary to prove a particular medical fact." *Brown-Forman Corp. v. Upchurch*, 127 S.W.3d 615, 621 (Ky. 2004). The claimant bears the burden of proving causation.

In addressing the issue of causation an expert medical witness is not required to use any particular "magic words" including the words "reasonable medical probability." The requirement of "reasonable probability" relates to the proponent's burden of proof and an Administrative Law Judge must determine whether the evidence is of sufficient quality and substance to rise to the level necessary to prove causation. *Turner v. Commonwealth*, 5 SW 3d 119 (KY, 1999).

After careful consideration of the evidence of record, it is found that Plaintiff has failed to meet his burden of proving he suffers from a condition as a result of his work at MSU. He has proven pleural plaques are present in his lungs and has proven he is not healthy. He has proven that pleural plaques may be the result of asbestos exposure. He has proven that MSU has dealt with asbestos abatement on two occasions although neither occurred in or around the area he worked, Reed Hall. He has not proven a connection between his work at MSU from 2003 – 2007, a harmful exposure to asbestos

that has manifested into his current condition. None of the evidence supports such a conclusion.

The evidence establishes that his job as a nursing instructor/multimedia lab coordinator would not indicate a risk of exposure although Plaintiff stated he was exposed while drilling holes and running cables in the ceilings and walls. The evidence establishes that no asbestos is present in the ceilings and/or walls of Reed Hall. He also suggested dust from buffing and cleaning the floors although the evidence establishes that these activities would not have been associated with the release of friable asbestos fibers (see Ken Troutman testimony).

Dr. Chaffin completed a form and stated his opinion that Williamson's lung condition is from occupational exposure to asbestos while working at MSU. Dr. Chaffin does not explain the asbestos exposure and no source of nor basis for his opinion is mentioned other than that Williamson told Dr. Chaffin he was exposed to asbestos at MSU. He did note Plaintiff worked as a roofer when he was young. Dr. Chaffin's opinion statements are not persuasive as there is no foundation for his opinion on work related asbestos exposure at MSU during Williamson's years of employment, 2003 – 2007 or 2008.

Likewise, Dr. Sikder completed a form where she found Williamson suffers from exposure to asbestos at MSU and further stated "pleural plaque are caused by inhalation of asbestos for years. During her deposition she stated she has not diagnosed asbestosis because no pleural fibrosis was found. She also agreed that all pleural plaque is not from asbestos exposure. Most importantly, she stated asbestosis requires either long-term exposure or intense exposure over a shorter period of time. It takes 20 – 30 years to develop symptoms and although 15 years or 40 years is possible, Williamson's exposure would had to have to been before 2000. She agreed that Williamson's claim of 4 years from exposure to onset of symptoms and 8 years from claim of exposure to the detection of the presence of pleural plaque was not sufficient time as the likely time line would be closer to 20 years. She diagnosed COPD based on pleural plaque but also stated pleural plaque are benign. Her opinion is not persuasive that Plaintiff suffers from work related asbestos exposure at

MSU during his years of employment, 2003 – 2007 or 2008.

The Supreme Court, in *Magic Coal Co. v. Fox*, 19 S.W.3d 88, 94 (Ky. 2000), explained the burden of proof in light of the rebuttable presumption contained within KRS 342.315(2) stating that the clinical findings and opinions of the university evaluator are presumed to accurately reflect the claimant's medical condition. The rebuttable presumption does not restrict the ALJ's authority to weigh conflicting medical evidence. An ALJ is only required to provide the rationale as to why the medical opinions and impairment rating of the university evaluator was not relied upon.

The opinion of the university evaluator, Dr. Cavallazzi, is not persuasive and is not relied upon. When Dr. Cavallazzi evaluated Williamson at the request of the DWC, he accepted Plaintiff's self-report that he was exposed to asbestos at Morehead while doing maintenance work. He diagnosed asbestos induced pleural plaque disease. On cross examination during his deposition, his opinion was quite different. He agreed that the presence of pleural plaque could indicate asbestos exposure but also could indicate tuberculosis or pneumonia. He stated that in this case, the pleural plaque were too small to result in symptoms. When he considered that Plaintiff's employment at MSU was from 2004 – 2007 or 2008 and that calcified pleural plaque was discovered in 2012, he stated that the exposure causing the pleural plaque was prior to 2004 because pleural plaque and asbestosis develop after a number of years. He believed the diagnosis should be asthma/COPD overlap and small airway disease from asbestos exposure. This could be caused by roofing. His opinion is not persuasive that Plaintiff suffers from work related asbestos exposure at MSU during his years of employment, 2003 – 2007 or 2008.

Dr. Choi, when diagnosing asbestos pleural plaque disease, stated he could not determine if the condition was occupational, he could not state with certainty. He noted that pleural plaque are typically caused by asbestos exposure but he could not make this determination in Williamson's case. Exposure to asbestos would have been prior to 2004. His opinion is not persuasive that Plaintiff suffers from work related

asbestos exposure at MSU during his years of employment, 2003 – 2007 or 2008.

Dr. Winkle diagnosed numerous conditions when evaluating Plaintiff for his Social Security disability claim. He found calcification in the pleural, and noted right CVA tenderness and right back tenderness related to pleural calcification. He did not mention causation or asbestos. His report fails to provide support for Plaintiff's claim that he suffers from work related asbestos exposure at MSU during his years of employment, 2003 – 2007 or 2008.

Dr. Broudy reviewed diagnostic images and stated there may have been calcified pleural plaque but no definite evidence of interstitial lung disease suggesting asbestosis. His report fails to provide support for Plaintiff's claim that he suffers from work related asbestos exposure at MSU during his years of employment, 2003 – 2007 or 2008.

There are a few mentions in the pleadings and during the hearing of "work study" and the potential for exposure. Plaintiff's Form 104 attached to the original filing, states "student and work study employee" from May of 1999 through May of 2002. The potential issues related to "work study" were never developed and "work study" is mentioned here for the sole purpose of showing the issue has not been overlooked or ignored. Even if (for the sake of argument) it was found that Plaintiff had been exposed to asbestos at Morehead as early as 1999, there still would not be enough time for manifestation of symptoms which he states began in 2008 or 2009. The shortest time frame provided in the record by the medical experts for manifestation of symptoms from asbestos exposure is 15 years, although this would be extreme. (See Dr. Sikder and Dr. Caballazzi).

There is no evidence of record to support the allegation that Plaintiff suffers a harmful change as a result of exposure to asbestos while working at MSU. While some of Plaintiff's expert medical testimony states Plaintiff suffers from asbestos exposure, no one could say it is the result of exposure during the years at MSU. Under cross examination, evidence supporting Plaintiff's claim was refuted. The evidence, in fact, is persuasive that a harmful exposure to asbestos would had to have

occurred long before Plaintiff's years at MSU. Plaintiff has the burden of proving his claim and the evidence does not support his allegations.

It is noted that Plaintiff's claim is not just that he suffers from asbestosis but also that he has a lung disease and COPD from "breathing, work, exposure to construction dust and exposure of effluent of broken water pipes and cleanup from such and also from leaks into the building, contact with ceiling materials, insulation, windows and flooring." Although most of the focus has been on asbestos and asbestosis, some of the medical experts diagnosed other conditions. The record fails to provide sufficient evidence of any harmful exposure while at MSU. Whatever Plaintiff's proper diagnosis, the evidence fails to support a finding of harmful exposure while at MSU.

Plaintiff cites to *AK Steel Corp. v. Pollitt*, 259 S.W.3d 505 (Ky. Ct. App. 2008) as controlling. The timeline distinguishes it from Williamson's claim. In *AK Steel*, Plaintiff claims his exposure occurred between 1978 and 1992. His first treatment began in 2004, as much as 26 years later. Williamson's timeline is far shorter, as explained above.

D. Notice.

KRS 342.185 provides notice of an accident must be given by an employee to his employer "as soon as practicable" afterward. Pursuant to KRS 342.200, a delay in giving notice is excused if it is shown to be due to mistake or other reasonable cause. Case law outlines three primary purposes for the statutory requirement of due and timely notice: 1) to give the employer an opportunity to place the employee under the care of competent physicians in order to minimize his disability and the employer's subsequent liability; 2) to enable the employer to investigate at an early time the facts pertaining to the injury; and, 3) to prevent the filing of fictitious claims where lapse of time makes proof of lack of genuineness difficult. *Smith v. Cardinal Const. Co.*, 13 S.W.3d 623 (Ky. 2000). Where one or more of these purposes have been thwarted by a claimant's delay in giving notice and the delay is not explained through reasonable cause, our appellate courts have not hesitated to affirm an ALJ's dismissal of the action. See *Whittle v.*

General Mills, Inc., 252 S.W.2d 55 (Ky. 1952); *T.W. Samuels Distillery v. Houck*, 296 Ky. 323, 176 S.W.2d 890 (1934); *Buckles v. Kroger Grocery & Baking Co.*, 280 Ky. 644, 134 S.W.2d 221 (Ky. App. 1939).

The stipulated date for the alleged injury is September 17, 2007, the last day Plaintiff worked for MSU. In the Form 102, Plaintiff states he gave notice by “Certified letter from Lawyer on or about September 29, 2014. Second notice mailed to the office of President of Morehead State University on October 9, 2014.” However, there is no evidence in the record of either letter. Therefore, without evidence to the contrary, it is found that Defendant’s first notice of this claim was with the filing of the Form 102 on December 29, 2014. Notice was not timely.

E. Unpaid or contested medical expenses; Benefits per KRS 342.730; Vocational rehabilitation; Safety Penalty.

As Plaintiff has failed to meet his burden of proof on the issues of work relatedness and causation, the remaining issues are moot.

Whether Williamson suffers from conditions brought on by asbestos exposure, the exposure did not occur while Williamson was employed at MSU. There is no credible evidence that Williamson was exposed to asbestos at MSU as the only evidence of occurrences of asbestos were nowhere near Reed Hall, the building where Williamson worked. There is no evidence of a causal connection between the conditions under which Williamson worked at MSU and the occupational disease, which can be seen to have followed as a natural incident to the work as a result of the exposure occasioned by the nature of his employment and which can be fairly traced to his employment as a proximate cause.

Williamson filed a twenty-page petition for reconsideration that was denied by order dated August 19, 2019.

We affirm the ALJ’s dismissal of Williamson’s claim.

As the claimant, Williamson bore the burden of proving each of the essential elements of his cause of action, including proving an occupational disease as defined by the Workers' Compensation Act. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). "Occupational disease" is defined at KRS 342.0011(2) and (3) as:

(2) "Occupational disease" means a disease arising out of and in the course of the employment;

(3) An occupational disease as defined in this chapter shall be deemed to arise out of the employment if there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is performed and the occupational disease, and which can be seen to have followed as a natural incident to the work as a result of the exposure occasioned by the nature of the employment and which can be fairly traced to the employment as the proximate cause. The occupational disease shall be incidental to the character of the business and not independent of the relationship of employer and employee. An occupational disease need not have been foreseen or expected but, after its contraction, it must appear to be related to a risk connected with the employment and to have flowed from that source as a rational consequence.

Because Williamson was unsuccessful in proving a causal connection between his alleged work-related lung conditions and his employment at Morehead, his claim for benefits was dismissed. The question on appeal is whether the evidence compels a different result. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Compelling evidence" is defined as evidence that is so overwhelming, no reasonable person could reach the same conclusion as the ALJ. REO Mechanical v. Barnes, 691 S.W.2d 224 (Ky. App. 1985).

The function of the Board in reviewing the ALJ's decision is limited to a determination of whether the findings made by the ALJ are so unreasonable under

the evidence they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000). In the July 29, 2019, Opinion and Order, the ALJ concluded Williamson has not proven a connection between his work at Morehead from 2003 through 2007 and harmful exposure to asbestos. The record does not compel a different result.

As an initial matter, Williamson has alleged several different work-related lung conditions – i.e. asbestosis, pleural plaque disease, and COPD. We will address the evidence in the record that supports the ALJ’s dismissal of all three.³

Regarding Williamson’s claim that he sustained work-related asbestosis due to his employment at Morehead, Dr. Sikder’s May 21, 2015, deposition constitutes substantial evidence in support of the ALJ’s dismissal of this portion of Williamson’s claim. In her deposition, Dr. Sikder explained why she made a diagnosis of COPD and not asbestosis, testifying as follows:

A: No. If you look at the CAT scan reports there is no asbestosis reported. So the basis of the diagnosis is pulmonary fibrosis which is not seen in the CAT scan, so we can’t really say this is asbestosis.

Q: So you don’t make that diagnosis?

A: No.

Dr. Sikder did not diagnose asbestosis, much less work-related asbestosis. Therefore, Dr. Sikder’s testimony, both in the form of the questionnaire she answered and during her deposition, constitutes substantial evidence in support of the ALJ’s dismissal of Williamson’s claim against Morehead for alleged work-related

³ We note Williamson also alleged “lung disease” as an injury. This Board believes the ALJ adequately resolved this non-specific injury by responding to the more specific injuries alleged of asbestosis, pleural plaque disease, and COPD.

asbestosis. We are aware that there is some medical testimony in the record supporting a finding of work-related asbestosis; namely, an undated report of Dr. Donald Chaffin attached to Williamson's December 12, 2014, Form 102-OD which alludes to a diagnosis of asbestosis and a October 3, 2014, questionnaire completed by Dr. Chaffin in which he makes a causal connection between Williamson's current lung condition and his employment at Morehead. However, mere evidence contrary to the ALJ's decision is not adequate to require reversal on appeal. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). Consequently, we affirm the ALJ's dismissal of this portion of Williamson's claim.

There are several pieces of medical evidence which support the ALJ's dismissal of Williamson's claim for work-related pleural plaque disease. Perhaps the most compelling evidence is Dr. Sikder's deposition. With respect to pleural plaque disease, Dr. Sikder, as noted by the ALJ in the July 29, 2019, Opinion and Order, determined "Williamson's claim of 4 years from exposure to onset of symptoms and 8 years from claim of exposure to the detection of the presence of pleural plaque was not sufficient time as the likely time line would be closer to 20 years." The ALJ's summation of Dr. Sikder's deposition testimony is harmonious with her testimony, including but not limited to the following:

Q: Okay. Doctor, the fact that Mr. Williamson has the pleural plaques now, and going back to our time line, that would suggest, would it not, that it was sometime back in the 1990s or maybe in the 1980s even that he had the exposure that led to the development of the plaque?

A: According to the literature, yes, that would be prior.

We are fully aware of Dr. Sikder's report in which she drew a causal connection between Williamson's work at Morehead and pleural plaque disease. However, as fact-finder, the ALJ has the sole authority to determine the quality, character, and substance of the evidence. Square D Company v. Tipton, 862 S.W.2d 308 (Ky. 1993); Paramount Foods, Inc. v. Burkhardt, 695 S.W.2d 418 (Ky. 1985). Similarly, the ALJ has the sole authority to judge the weight and inferences to be drawn from the evidence. Miller v. East Kentucky Beverage/Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997); Luttrell v. Cardinal Aluminum Co., 909 S.W.2d 334 (Ky. App. 1995). Where the evidence is conflicting, the ALJ may choose whom or what to believe. Pruitt v. Bugg Brothers, 547 S.W.2d 123 (Ky. 1977). Relevant here is the fact that the ALJ has the discretion and sole authority to reject any testimony and believe or disbelieve parts of the evidence, regardless of whether it comes from the same witness or the same party's total proof. Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (Ky. 1977); Magic Coal v. Fox, 19 S.W.3d 88 (Ky. 2000); Halls Hardwood Floor Co. v. Stapleton, 16 S.W.3d 327 (Ky. App. 2000). Thus, the ALJ, within her discretion, disregarded Dr. Sikder's opinion expressed in her report and instead relied on her opinions elicited in her deposition testimony.

Further bolstering the ALJ's ultimate decision to dismiss Williamson's claim for alleged work-related pleural plaque disease is the August 6, 2015, questionnaire of Dr. Chio in which he clearly opined he cannot determine with certainty whether Williamson's lung condition is occupational. Even Dr. Cavallazzi, the university evaluator the ALJ specifically rejected, opined there was "a lot of potential" for Williamson's exposure prior to his employment at Morehead to have

contributed to his pleural plaque disease; that, on average, it takes about 20 years; but, that he cannot say with certainty exactly what exposure caused Williamson's condition." As substantial evidence supports the ALJ's dismissal of this portion of Williamson's claim, we must affirm.

Regarding Williamson's claim he sustained work-related COPD during his employment with Morehead, substantial evidence supports the ALJ's dismissal of this portion of Williamson's claim. We again turn to Dr. Sikder's deposition in which she testified as follows:

A: You know, there is the question of COPD. He does have COPD which is evidenced in the PFT. His FEV1 is in the sixty percent range. Sixty percent once in April and then in September or August it was sixty-three percent, maybe the other way around, but it was sixty percent about. And looking at his history that he had never smoked and he had some occupations, I would say that probably is related to his occupational exposure. So he has COPD. It's mild. And it's most likely is [sic] associated with occupational exposure.

Q: And what occupational exposure are you addressing?

A: The occupational exposure that he gave me is that he worked in construction for twenty years, and then worked as a janitor for forty years. He drove a coal truck for four and a half years. He also worked as a nurse. ***So most likely this is due to the construction exposure.*** Now as a janitor I'm not sure what he got exposed to, but that is not considered a high risk in our literature. (emphasis added).

The ALJ is vested with the discretion to infer from Dr. Sikder's deposition testimony that Williamson's COPD is due to his exposure while working in the construction industry and not while carrying out his various job duties at Morehead. Therefore, as substantial evidence supports the ALJ's dismissal of this portion of Williamson's claim, we affirm.

In summary, there is a significant amount of medical evidence in the record. Some of the medical evidence is undoubtedly supportive of the presence of some of the work-related diseases which Williamson has alleged. Other evidence is not supportive. Further, some of the medical evidence is inconsistent. Here, the ALJ, after a careful examination of the entirety of the medical evidence, determined Williamson did not meet his burden of establishing any of his alleged lung conditions are causally related to his employment at Morehead. The ALJ summarized the medical evidence extensively and set forth, in her analysis, exactly what was persuasive and what was not. As there is substantial evidence in the record in support of the ALJ's ultimate conclusions, the evidence does not compel a different result. Therefore, we must affirm.

On cross-appeal, Morehead asserts the ALJ lacked jurisdiction to resolve Williamson's claim, as the Court of Appeals' determination that this case falls within the purview of the Board of Claims is *res judicata*. The record indicates Williamson filed a civil action against Morehead in Rowan Circuit Court. In dismissing Williamson's suit, the Rowan court held the Board of Claims has exclusive jurisdiction over asbestos-related claims. This holding was upheld by the Court of Appeals on February 3, 2017.⁴ Therefore, as argued, the ALJ should have dismissed the claim for lack of jurisdiction. We disagree.

As correctly held by the ALJ in the July 29, 2019, Opinion and Order, when the Court of Appeals determined that the Board of Claims had exclusive

⁴ "This case falls squarely within the purview of KRS 44.070(1), as the only damages Williamson requests are purportedly the result of his alleged asbestos exposure at MSU." Lewis Williamson v. Morehead State University and Commonwealth of Kentucky, No. 2015-CA-001767-MR (Not To Be Published, February 3, 2017), Slip Op. at 5.

jurisdiction in this matter, it was referring only to Williamson's suit against Morehead in Rowan Circuit Court. *The Court of Appeals was not aware of Williamson's workers' compensation claim when providing this dicta.* Rather, it was only concerned with the suit brought by Williamson against Morehead in the Rowan Circuit Court. Therefore, the doctrine of *res judicata* is inapplicable, as the doctrine within the context of workers' compensation claims only acts to bar the re-litigation of a cause of action previously adjudicated between the same parties. A final judgment, identity of subject matter and mutuality of parties is required. *BTC Leasing Inc. v. Martin*, 685 S.W.2d 191 (Ky. App. 1984). The threshold requirements for *res judicata* certainly have not been satisfied herein; therefore, the ALJ had jurisdiction to resolve Williamson's workers' compensation claim. On this issue, we affirm.

Accordingly, on all issues raised on appeal and cross-appeal, the July 29, 2019, Opinion and Order Dismissing Williamson's claim for benefits and the August 19, 2019, Order are **AFFIRMED**.

ALVEY, CHAIRMAN, CONCURS.

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