

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0113

September Term, 2015

FIRE & POLICE EMPLOYEES'
RETIREMENT SYSTEM OF BALTIMORE
CITY

v.

STEVEN M. GREEN

Krauser, C.J.,
Leahy,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: July 29, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

We are asked to determine whether the hearing examiner’s decision to deny line-of-duty benefits because the appellee’s disability was due to a pre-existing condition and not a work-related injury was supported by substantial evidence in the record and therefore reasonable.

BACKGROUND

Steven Green, appellee, was a firefighter with the Baltimore City Fire Department. In 2012, while ascending a spiral staircase at the firehouse, Green hit his head on the top landing of the staircase. Green went to the infirmary and complained of blurred vision, vomiting, and neck stiffness. He was diagnosed with a “head contusion” and placed off-duty. Afterward, he went back to the infirmary for a follow-up visit and said that his neck was still sore. Green was ordered to get an MRI of the neck and to see a spine specialist.

Green saw Dr. Edwards, who initially diagnosed him with a “cervical musculoligamentous strain” as well as “cervical disk degeneration and spondylosis without myelopathy, with radiculitis.” Dr. Edwards ordered an MRI of Green’s cervical spine. The MRI report’s “conclusion” section reads: “1. Multilevel degenerative disc disease, facet and uncovertebral joint hypertrophy with straightening of cervical spine curvature.” Sections 2, 3, and 4 discussed spinal narrowing at C3-C4, C4-5, and C6-7 as well as “shallow disc herniation.”

After reviewing the MRI, Dr. Edwards diagnosed Green with “1. Multilevel cervical disc degeneration and spondylosis, 2. C6-7 cervical radiculopathy, 3. Multilevel cervical stenosis.” Dr. Edwards then gave Green steroid injections in his cervical spine to alleviate pain.

Green was referred to Dr. Perlewitz to “discuss potential surgical fusion considerations.” Dr. Perlewitz diagnosed Green with: “1. Work-related exacerbation of multilevel disc degeneration and spondylosis,” as well as narrowing of the spine and a nerve condition. Dr. Perlewitz recommended a surgical procedure to decompress the spinal cord and stabilize the vertebrae and fusion at C6 through C7. In Dr. Perlewitz’s post-operative report, he noted his findings from a second MRI: “MRI demonstrates diffuse disk degenerative and spondylotic changes from C3 to C7 with marked straightening and slight reversal of normal cervical lordosis.” The report also contained observations in the technique section that mention “markedly degenerative disk material,” as well as “a congenitally narrow spinal canal.”

Green filed a line-of-duty disability application with the Fire & Police Employees’ Retirement System of Baltimore City (F&P). Green then underwent an independent medical examination with Dr. Halikman. Dr. Halikman reviewed the prior medical evaluations by Dr. Edwards and Dr. Perlewitz and came to his own conclusion:

Lastly, there is a subsequent report prepared by Dr. ... Edwards dated January 30, 2013 indicating that his surgery relates in part to the work related injury as “aggravation of pre-existing cervical degenerative disc disease, spondylosis and stenosis.”

I agree completely with the assessment by Dr. ... Edwards. This gentleman clearly had significant pre-existing degenerative disc disease, spondylosis and disc herniations. However, the incident at work resulted in the subligamentous aspect of his disc herniations. He is, in my opinion, permanently disabled from his job as a fireman. This disability relates in part to a pre-existing condition as well as the accident of July 27, 2012.

Mr. Green has undergone surgery and has done well. However, it is my opinion that he is permanently [disabled] from his job as a fireman. Please

note once again that his disability is due to a pre-existing condition which was aggravated by an accident at work. I cannot exclude the possibility that the sbligamentous disc herniations seen were the direct result of the work related accident.

(emphasis added).

The hearing examiner, reviewing Green’s disability application, ultimately decided that Green: “[H]as not proven by a preponderance of the evidenc[e] that his impairment causing his incapacity is the direct result of a bodily injury arising out of and in the course of actual performance of duty. The medical evidence suggests the Claimant’s impairment is a result of pre-existing disc degeneration.” Green was awarded non-line-of-duty disability retirement.

Green sought judicial review in the Circuit Court for Baltimore City. The circuit court reversed the decision of the hearing examiner, without providing a written or oral explanation for its order, and remanded the case to F&P to enter a finding that Green was eligible for line-of-duty disability retirement. F&P noted this appeal.

DISCUSSION

On appeal, F&P asks us to determine whether the circuit court erred in reversing the administrative decision of the hearing examiner to deny line-of-duty benefits. F&P argues that the hearing examiner’s finding that the disability was due to a pre-existing condition was supported by substantial evidence and was therefore proper. Green argues that a line-of-duty injury does not need to be the sole cause of his disability as long as it is a proximate cause and that there was not substantial evidence to support a finding that his impairment is due entirely to his pre-existing condition. We agree with F&P’s contention that the circuit

court erred in reversing the decision of the hearing examiner because there was substantial evidence present to support the hearing examiner's decision.

If Green's injury occurred in the actual performance of duty, he would receive line-of-duty benefits, but if the injury was pre-existing and occurred outside the line-of-duty, he would only receive non-line-of-duty benefits.

If the injury arose out of or in the course of the actual performance of duty, then the claimant who is totally incapacitated is entitled to special disability [line-of-duty] benefits; if the injury was caused by any other means, then the claimant who is totally incapacitated is entitled to ordinary [non-line-of-duty] disability benefits.

Marsheck v. Board of Trustees of the Fire & Police Employees' Ret. Sys., 358 Md. 393, 410 (2000).

The applicant for line-of-duty benefits has the burden of "proving by a preponderance of the evidence that the disability was the result of an injury arising out of and in the course of the actual performance of duty, without willful negligence on the member's part." Baltimore City Code, Art. 22, § 33(1)(10)(ii).

When reviewing an administrative decision, this Court's role is "precisely the same as that of the circuit court." *Fire & Police Employees' Ret. Sys. of City of Baltimore v. Middleton*, 192 Md. App. 354, 359 (2010). "We must presume that a decision made by an administrative body is *prima facie* correct." *Id.* Our review of a final decision of an administrative body exclusively examines "whether the agency had substantial evidence to support its decision and whether that decision is free from prejudicial legal error." *Id.* In applying this test, "we must decide whether a reasoning mind reasonably could have

reached the factual conclusion the agency reached.” *Id.* We do not substitute our own evaluation and judgment for that of the agency as long as the agency’s decision was made based on substantial evidence in the record. *Id.* If the hearing examiner had substantial evidence to deem a disability to have been the result of a pre-existing condition, that determination must be upheld. “The hearing examiner has discretion to accept any explanation for a disability [that] is supported by substantial evidence.” *Id.* at 362. Under the Baltimore City Code, “[t]he final determination of the hearing examiner is presumptively correct and may not be disturbed on review except when arbitrary, illegal, capricious, or discriminatory.” Art. 22. § 33(l)(12).

When evaluating circumstances involving a work-related injury and a pre-existing condition to determine if line-of-duty benefits are appropriate, the hearing examiner must rely on the evidence in the record. If there are multiple medical diagnoses within the record that explain that the disability was caused by a pre-existing condition, those diagnoses constitute substantial evidence to deny line-of-duty benefits. *Middleton*, 192 Md. App. at 364 (holding that a medical opinion stating that the main source of the applicant’s pain was caused by a pre-existing condition provided the hearing examiner with substantial evidence to deny line-of-duty benefits); *Eberle v. Baltimore County*, 103 Md. App. 160, 174-75 (1995) (holding that multiple medical reports that mentioned a pre-existing condition provided the hearing examiner with substantial evidence to deny line-of-duty benefits). A hearing examiner, like a lay person, is not qualified to render an expert opinion on a

complex medical question or replace a doctor’s opinion with his or her own medical opinion. *Hersl v. Fire & Police Emphyoees’ Ret. Sys.*, 188 Md. App. 249, 264 (2009).¹

In the present case, the hearing examiner reviewed all of the evidence on the record and concluded that line-of-duty benefits were not appropriate because all three doctors (Edwards, Perlowitz, and Halikman) diagnosed Green’s disability as having been caused by a pre-existing condition. Both MRI screenings also provided evidence that Green had a pre-existing condition. Dr. Edwards stated that Green had “pre-existing cervical degenerative disc disease, spondylosis and stenosis.” Dr. Perlewitz diagnosed Green with “multilevel disc degeneration and spondylosis.” Dr. Halikman also “completely agreed” with the diagnosis of Dr. Edwards. The medical record contains several mentions of Green’s pre-existing degenerative disc disease and the treatment he received specifically for that condition. All three doctors gave the same opinion: there was a pre-existing condition.

As a result, there was substantial evidence in the record before the hearing examiner to support her conclusion that Green’s disability was the result of a pre-existing condition. Viewing the hearing examiner’s decision as presumptively correct, we discern nothing about that decision that was arbitrary, illegal, capricious or discriminatory. Baltimore City Code, Art. 22. § 33(1)(12). It follows, therefore, that the circuit court erred in reversing that

¹ Green’s reliance on *Hersl* for a broader point is not warranted. In *Hersl*, we reversed a hearing examiner’s decision that was contradictory to that of the claimant’s treating physician. 188 Md. App. at 264, 269. Here, however, the hearing examiner’s conclusion was consistent with the treating physicians’ diagnoses.

decision because it was based on substantial evidence in the record and therefore reasonable.

**JUDGMENT OF THE CIRCUIT COURT FOR
BALTIMORE CITY REVERSED. CASE
REMANDED TO THAT COURT FOR THE
ENTRY OF JUDGMENT IN FAVOR OF THE
APPELLANT. COSTS TO BE PAID BY THE
APPELLEE.**