Circuit Court for Montgomery County
Case No. 484120V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0197

September Term, 2022

BETH BOWINS

v.

MONTGOMERY COUNTY, MARYLAND, et al.

Beachley,
Shaw,
Zic,

JJ.

Opinion by Shaw, J.

Filed: December 5, 2022

Appellant, Beth Bowins, appeals an order of the Circuit Court for Montgomery County, finding that the Workers' Compensation Commission erred as a matter of law when it authorized knee replacement surgery without a sufficient medical opinion that the surgery was causally related to her 2013 work injury. Appellant presents one question for our review, which we have rephrased[1]:

1. Did the Commission err in authorizing Appellant's left knee replacement surgery?

BACKGROUND

Appellant, Beth Bowins, worked with transportation for the Montgomery County Public Schools when she was injured and thereafter filed a claim with the Workers' Compensation Commission ("Commission"). In March 2011, Appellant slipped and fell on a school bus and sustained an injury to her left knee. Appellant was treated by a physician and she filed a claim in December 2011.

Appellant sustained another injury to her left knee, in April 2013, when she was kicked by a student on a bus and she immediately underwent medical treatment. Appellant filed a claim with the Workers' Compensation Commission and on July 20, 2017, the Commission found that she suffered a forty-one percent loss of use of the left knee with thirty-one percent reasonably attributable to the April 2013 accidental injury, and ten percent due to the March 2011 injury. On September 17, 2019, Appellant filed issues with the Commission seeking authorization for knee replacement surgery.

[1] Did the Circuit Court err when it found that the Commission erred as a matter of law in authorizing Ms. Bowins left total knee replacement surgery without a medical opinion that the surgery was causally related to her 2013 work injury?

During a hearing held on December 31, 2019, Appellant submitted a medical opinion from Dr. Adedapo Ajayi, dated December 30, 2019, in which he stated: "it is plausible that the patient's left knee injury and persistent symptoms may have been aggravated and further irritated the osteoarthritis of the patient's left knee." The employer, Montgomery County Board of Education, through its insurer, Montgomery County Maryland ("County"), disputed the proposed surgery's causal relationship to the April 2013 injury. The County submitted a report by Dr. Ralph Salvagno, that opined that the need for left total knee replacement surgery was not causally related to the April 5, 2013 injury, but instead related to Appellant's pre-existing condition. The Commission found Dr. Ajayi's opinion was not sufficient and ordered a second opinion. Appellee was required to pay the costs. Appellant was then examined by Dr. John J. Klimkiewicz and he issued a report, containing his opinion.

On October 26, 2020, the Commission held a hearing and following the submission of Dr. Klimkiewicz's opinion, testimony from Appellant and argument of counsel, the Commission issued an order finding "that authorization for left total knee replacement surgery is allowed" and that the employer was "entitled to a credit for the cost of the second opinion."

Appellee filed a petition for judicial review in the Circuit Court for Montgomery County on November 25, 2020, requesting an on the record appeal and Appellant filed her Notice of Intent to Participate and included a jury demand. On October 29, 2021, the court held a hearing, where both parties argued their positions regarding the medical opinions. On December 6, 2021, the court issued a Memorandum Opinion finding that the

Commission erred as its decision was not based on substantial evidence. On December 13, 2021, Appellant filed a Motion for Reconsideration and Appellee filed an Opposition. The court ultimately denied the motion. Appellant filed this timely appeal.

STANDARD OF REVIEW

Pursuant to § 9-745(b) of the Maryland Labor and Employment Article, on appeal: (1) "the decision of the Commission is presumed to be prima facie correct," and (2) "the party challenging the decision has the burden of proof." Maryland Lab. & Empl. Code § 9-745 (2017). On appeal, we accept the Commission's findings of fact when supported by substantial evidence and we may not substitute our judgment. *See Dep't of Hum. Res. v. Thompson*, 103 Md. App. 175, 189 (1995) ("It is well settled that 'the reviewing court should not substitute its judgment for the expertise of those persons who constitute the administrative agency from which the appeal is taken.'"). "To the extent the issues on appeal turn on the correctness of an agency's findings of fact, such findings must be reviewed under the substantial evidence test." *Id.* (citing *State Admin. Bd. of Election Laws v. Billhimer*, 314 Md. 46, 58 (1988)). "With respect to an agency's conclusions of law, we have often stated that a court reviews *de novo* for correctness." *Schwartz v. Maryland Dep't of Nat. Res.,* 385 Md. 534, 554 (2005) (citing *Spencer v. State Bd. of Pharmacy*, 380 Md. 515, 528 (2004)). As to matters of law, our review is without deference. *State Admin. Bd. of Election Laws v. Billhimer*, 314 Md. 46, 59 (1988) ("When, however, the agency's decision is predicated solely on an error of law, no deference is appropriate and the reviewing court may substitute its judgment for that of the agency."). The agency's

decision is examined "in the light most favorable to it." *Id.* at 205 (internal citation and quotation omitted).

Our review of a Commission's decision is based on the Maryland Administrative Procedure Act:[2]

> (h) Decision. -- In a proceeding under this section, the court may:
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> (1) remand the case for further proceedings;
> (2) affirm the final decision; or
> (3) reverse or modify the decision if any substantial right of the petitioner may have been prejudiced because a finding, conclusion, or decision:
> (i) is unconstitutional;
> (ii) exceeds the statutory authority or jurisdiction of the final decision maker;
> (iii) results from an unlawful procedure;
> (iv) is affected by any other error of law;
> (v) is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; or
> (vi) is arbitrary or capricious.

Maryland Administrative Procedure Act § 10-222(h) of the State Government Article.

I.

DISCUSSION

Appellant argues the Commission's decision authorizing knee replacement surgery, as a result of her April 2013 work injury, was not error and there was substantial evidence to support its conclusions. She also argues that medical expert testimony was not required and that she "presented all of the relevant pieces of information to sufficiently demonstrate that her present left knee complaints were causally-related to her April 5, 2013 work-injury

[2] Review in this case is governed by the APA because this is an on the record appeal.

and the 2019 medical treatment she had undergone." Montgomery County argues the Commission's decision was not supported by substantial evidence and the Commission erred, as a matter of law, in authorizing the left knee surgery.

To be sure, Appellant was required to present evidence to the Commission that the requested treatment was causally related to her April 2013 work injury. When the Commission held its initial hearing, it determined that the opinion of Appellant's expert witness, Dr. Ajayi, was not sufficient. He opined that, "it is plausible that the patient's left knee injury and persistent symptoms may have been aggravated and further irritated the osteoarthritis of the patient's left knee." The Commission found:

> Hearing was held in the above claim at Beltsville, Maryland on December 31, 2019 and the Commission finds that the claimant's legal opinion stating that the knee replacement is plausibly related to the accidental injury is legally insufficient. The claimant shall obtain a second opinion on the need for the knee replacement with a doctor of her own choosing to be paid for by the employer and insurer and a further hearing shall be held after the second opinion is rendered if the claimant has obtained a legally sufficient causal relation opinion. Average weekly wage: $775.92.

Appellant was then evaluated by another physician, Dr. Klimkiewicz, who submitted his medical opinion. His report concluded:

> The patient is 52 years old, has had no injury prior to the initial injury where she had fallen on the bus and has had a failed arthroscopy up to this point. I do feel as though the fall precipitated a lot of the degenerative changes that have since occurred. She has had a failed arthroscopy. At this point, I think she has been managed appropriately and I would be in agreement that I do feel as though, based on her current level of symptomatology, that total knee replacement is medically necessary.

At the next Commission hearing, the following exchange occurred:

> County Attorney: It is the County's position that this report is still not sufficient as far as causally relating it to the case that we are here on.

Commissioner: I did sort of think that. When I looked at the doctor's report I was like he still didn't say exactly what he needs to say, you know.

Counsel for Ms. Bowins: I don't think a doctor is going to say it is related to this.

Commissioner: They say it every day. We see it every day.

Counsel for Ms. Bowins: Your Honor, he says the fall which is the work injury and arthroscopic surgery—

Commissioner: You know what I'm talking about.

Counsel for Ms. Bowins: I know what you are saying.

Commissioner: You give somebody a second chance to get it right, and they still don't do it. Now, it is better than it was.

Counsel for Ms. Bowins: This is a totally different doctor.

The Commissioner: I'm not prepared to say it is legally insufficient.

Counsel for Ms. Bowins: The two things he notes—

The Commissioner: Did he charge for that opinion?

Counsel for Ms. Bowins: I think so. The County paid for it, yes, [Y]our Honor.

The Commissioner: Well, they are going to get their money back.

Ultimately the Commission granted authorization for the surgery, simply stating:

> Hearing was held in the above claim at Beltsville, Maryland on October 26, 2020 and the Commission finds that authorization for left total knee replacement surgery is allowed. The Commission further finds that the employer is entitled to a credit for the cost of the second opinion, which shall be taken against future permanent partial disability benefits. Average weekly wage: $775.92.

Our task, on review, is to examine the entirety of the record of the proceedings. Based on that review, we are unable to discern whether the Commission erred, as a matter of law, because the Commission failed to provide its reasoning for determining that the newer opinion sufficiently established causation. Dr Klimkiewicz's report contained no express or implied opinion that the proposed knee surgery was causally related and makes no distinction between the impact of the 2011 or 2013 injuries. We note the Commission's remarks, after reviewing the report, expressed concern about the sufficiency of the opinion, yet without explanation, it held that the surgery was authorized. We shall therefore remand this case for the Commission to resolve this apparent inconsistency.

While our task is not to substitute our judgment for the expertise of the agency, the record must be clear, and the Commission's findings of fact must be supported by substantial evidence. *See Emps.' Retirement Sys. of Balt. Cnty. v. Brown,* 186 Md. App. 293, 312 (2009). Here, we are unable to glean the sufficiency of the medical opinion because of its conflicting factual summary and vagueness, and therefore, whether the Commission erred as a matter of law. We shall remand to the Commission for further proceedings, in accordance with Maryland Administrative Procedure Act § 10-222 of the State Government Article.

We reject Appellant's argument that because her testimony and the two medical expert reports were relied upon, when taken together, a medical opinion was not necessary. We hold that the determination of the causal relationship between the 2013 work injury and the left knee replacement surgery was not an issue a lay person could establish. Because of the six-year lapse, Appellant needed to prove a nexus between the 2013 incident

and the surgical request in 2019, and that could only be accomplished through expert medical testimony. As we stated in, *American Airlines Corp. v. Stokes*:

> [t]he causal relationship will almost always be deemed a complicated medical question and expert medical testimony will almost always be required when one or more of the following circumstances is present: 1) some significant passage of time between the initial injury and the onset of the trauma; 2) the impact of the initial injury on one part of the body and the manifestation of the trauma in some remote part; 3) the absence of any medical testimony; and 4) a more arcane cause-and-effect relationship that is not part of common lay experience.

American Airlines, 120 Md. App. 350, 356 (1998) (quoting *S.B. Thomas, Inc. v. Thompson*, (citation omitted)).

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY VACATED, AND CASE REMANDED TO THAT COURT WITH INSTRUCTIONS TO VACATE THE DECISION OF THE WORKERS' COMPENSATION COMMISSION AND TO REMAND THE CASE TO THE WORKERS' COMPENSATION COMMISSION FOR PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.