Circuit Court for Prince George's County
Case No. CAL17-12988

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 00612

September Term, 2018

QUAKER CITY MOTOR PARTS, et al.

v.

STERLING CROUCH

Fader, C.J.,
Graeff,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: August 16, 2019

This case arises from a workers' compensation claim filed by Sterling Crouch, appellee. On May 1, 2018, the Circuit Court for Prince George's County issued an order affirming the order issued by the Workers' Compensation Commission (the "Commission"), which found that the statute of limitations did not bar Mr. Crouch's request for payment of temporary total disability benefits. Appellants, Quaker City Motor Parts ("Employer") and Pennsylvania Mfg. Association ("Insurer"), appeal from the circuit court's order and present the following question for this Court's review, which we have rephrased slightly, as follows:

> Did the circuit court and the Commission err in finding that the five-year statute of limitations was not applicable when Mr. Crouch did not file issues for indemnity benefits until after the five-year limitations period had run?

For the reasons set forth below, we shall reverse the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Mr. Crouch filed a workers' compensation claim after he sustained injuries to his right shoulder on April 22, 2011. The Commission determined that Mr. Crouch's injury was compensable, awarded him temporary total disability benefits ("TTD benefits"), and ordered that Mr. Crouch be provided with medical treatment.

On August 30, 2011, Insurer issued Mr. Crouch his last TTD benefits check and filed a termination of temporary total disability benefits statement, explaining that Mr. Crouch had reached maximum medical improvement. On September 6, 2011, Mr. Crouch deposited this final TTD benefits check.

On August 18, 2015, Mr. Crouch filed Issues with the Commission, seeking authorization for surgery for his injury.[1] The Insurer approved the surgery, and the adjuster "communicated to [counsel for Mr. Crouch] to withdraw [the] issues in light of [Insurer's] surgical authorization." On January 12, 2016, Mr. Crouch withdrew his previously filed Issues.

Mr. Crouch delayed his surgery due to an educational program he was taking. On September 13, 2016, more than five years after his last compensation payment, Mr. Crouch again filed Issues with the Commission. This time he sought both authorization for the surgery and TTD benefits "from date of surgery until [his] return to work." On December 21, 2016, Employer filed Issues with the Commission, citing limitations and stating: "[Mr. Crouch] filed Issues for authorization for surgery and TTD to begin from the date of surgery. Employer/Insurer contend that [Mr. Crouch is] barred from further indemnity benefits under" Maryland Code (2016 Repl. Vol.) § 9-736(b)(3)(i)-(iii) of the Labor and Employment Article ("LE").

The Commission subsequently held a hearing. Counsel for Employer and Insurer stated that there was no request for TTD on Mr. Crouch's Issues filed August 18, 2015; there was only a request for authorization for surgery. Although they authorized the surgery, Mr. Crouch did not have the surgery at that time, and by the time new Issues were filed in September 2016, the statute of limitations for indemnity had passed.

[1] Mr. Crouch's attorney checked boxes on the pre-printed issues form for medical expenses, "Attorney fees/costs," and "Penalties for contacting our client once our appearance was entered in the case."

Counsel for Mr. Crouch argued that TTD benefits were implicitly sought by Mr. Crouch's filing of the Issues on August 18, 2015, requesting surgery. Counsel for Mr. Crouch stated: "Once you have surgery you are entitled to [TTD benefits]." When the Commission asked what support counsel could offer for that proposition, counsel conceded: "I don't have any case law to point you to because there is no case law."[2] Counsel stated that implicit in the filing for surgery was a request for TTD from the date of surgery to the date of his return to work.

Counsel for Employer and Insurer responded, in pertinent part:

> There was no request for TTD made and even if there had been that request, those issues were withdrawn.
>
> So once those issues are withdrawn there are no issues pending before the Commission.
>
> The authorization for surgery is given, Mr. Crouch elects not to have the surgery, and he elects not to have the surgery until after the statute of limitations has run.
>
> Now, that was his decision. That is not anything injected by the employer, insurer. We didn't ask him to wait. We didn't tell him he had to wait. There was nothing with regards to that. That was his decision to do.
>
> Now, if his counsel failed to tell him that the statute of limitations was about to run and that he either needed to have the surgery or file for, at least temporary total disability for that period of time, that is not the fault of the employer and insurer.

[2] The Commissioner then stated:

> I can say that when people file for surgery, I just voluntarily bring up the fact that you also are requesting the TTD. Some people file for it, some people don't file for it.

On May 15, 2017, the Commission issued an order finding that, as a result of an accidental injury, Mr. Crouch was paid temporary total disability until August 30, 2011. With respect to the issue presented, the Commission found "that the statute of limitations does not bar the payment of temporary total disability benefits during the period of [Mr. Crouch's] authorized right shoulder surgery."

Employer and Insurer filed a petition for an on-the-record judicial review of the Commission's order. On April 23, 2018, the circuit court held a hearing.

Counsel for Employer and Insurer again argued that Mr. Crouch's claim was barred by the statute of limitations because he did not timely file Issues with the Commission requesting the TTD benefits. Counsel for Mr. Crouch stated that the issue before the circuit court was whether "the Commission was correct in holding that an authorization of surgery has an implicitly linked authorization of indemnity benefits associated with it." Counsel argued that, when Insurer approved the surgery, it was also approving indemnity benefits.

Counsel for Employer and Insurer responded that all documents sent to Mr. Crouch and his attorney indicated that Insurer was "authorizing the surgery only." He asserted that there was "nothing in the record that [said] at any point throughout this case that [E]mployer and [I]nsurer authorized the surgery and temporary total disability benefits."

On May 1, 2018, the circuit court issued an order affirming the May 15, 2017, order issued by the Commission. This appeal followed.

DISCUSSION

Employer and Insurer contend that the Commission "erred in finding that the five-year statute of limitations was not applicable when [Mr. Crouch] did not file issues for indemnity benefits until after the five-year statute of limitations had run." Mr. Crouch contends that the Commission "correctly found that the five-year statute of limitations bar was inapplicable," offering several arguments in support. Initially, he asserts that limitations was inapplicable because he "had filed issues for indemnity benefits [implicitly] through its request for surgery within the statutory period." Moreover, he contends that Employer and Insurer "should be estopped" from arguing limitations because Mr. Crouch relied on representations from Insurer before withdrawing his 2015 issues, and his "[f]ailure to proceed to a hearing for surgery and its indemnity benefits prior to the running of the statute of limitations is due to the fraud or facts and circumstances of the [E]mployer/[I]nsurer's adjuster."[3]

[3] Mr. Crouch also contends, in the alternative, that the "five-year statute of limitations bar is inapplicable as to indemnity benefits statutorily owed . . . but not yet paid." In that regard, he seeks payment of three days' wages. This argument however, was not raised before the Commission. As such, it is not preserved for this Court's review, and we will not consider it. *Brzowski v. Md. Home Imp. Com'n*, 114 Md. App. 615, 637, *cert. denied*, 346 Md. 238 (1997) ("Generally, objections that have not been raised in proceedings before an agency will not be considered by a court reviewing an agency order.").

I.

Standard of Review

Pursuant to LE § 9-745, there are "two alternative modalities" for bringing an appeal of the Commission's decision to a circuit court. *S.B. Thomas, Inc. v. Thompson*, 114 Md. App. 357, 364 (1997). We have explained:

> One is pursuant to [LE] § 9–745(e), which replicates the routine appeal process from administrative agency decisions generally. According to that modality, the circuit court reviews the Commission's action on the record and determines whether the Commission 1) acted within its power and 2) correctly construed the law and facts.
>
> The other and more unusual modality is that spelled out by § 9–745(d), which provides for what is essentially a trial *de novo*.[4] *Holman v. Kelly Catering*, 334 Md. 480, 484, 639 A.2d 701 (1994); *Smith v. State Roads Commission*, 240 Md. 525, 533, 214 A.2d 792 (1965); *Richardson v. Home Mutual*, 235 Md. 252, 255, 201 A.2d 340 (1964); *General Motors Corp. v. Bark*, 79 Md. App. 68, 74, 555 A.2d 542 (1989).

S.B. Thomas, Inc., 114 Md. App. at 364. *Accord McLaughlin v. Gill Simpson Elec.*, 206 Md. App. 242, 252–53 (2012).

Here, the appeal was taken pursuant to the first modality. Such an appeal is a "typical administrative agency appeal," in which this Court "look[s] through the circuit court judgment to review the decision of the Commission." *Stine v. Montgomery Cty.*, 237 Md. App. 374, 381 (2018). *Accord McLaughlin*, 206 Md. App. at 251. "'We must respect

[4] Though not relevant for the purpose of this appeal, as the appeal in question utilized the first modality of appeal in the circuit court, it is worth noting that the second modality is not a *de novo* trial in the traditional sense. Judge Moylan in *S.B. Thomas, Inc. v. Thompson*, 114 Md. App. 357 (1997) and Judge Nazarian in *Stine v. Montgomery County*, 237 Md. App. 374 (2018), explain the distinction quite well.

the expertise of the agency and accord deference to its interpretation of a statute that it administers[.]'" *McLaughlin*, 206 Md. App. at 251 (quoting *Watkins v. Sec'y, Dep't of Pub. Safety & Corr. Servs.*, 377 Md. 34, 45–46 (2003)). If, however, "an agency[] decision is predicated . . . on an error of law, including [an] error[] in statutory interpretation, we may substitute our judgment for that of the administrative agency." *Id.*

II.

Discussion

The Maryland Worker's Compensation Act provides for payment of indemnity benefits, i.e., wage compensation, including TTD. *See Wal Mart Stores, Inc. v. Holmes*, 416 Md. 346, 353–54 n.2 (2010). The Act, however, provides a statute of limitations regarding the ability to seek indemnity benefits.

LE § 9-736(b)(1) provides that the Commission has "continuing powers and jurisdiction over each claim under this title," with the proviso that:

> (3) Except as provided in subsection (c) of this section, the Commission may not modify an award unless the modification is applied for within 5 years after the latter of:
>
> (i) the date of the accident;
>
> (ii) the date of disablement; or
>
> (iii) the last compensation payment.
>
> (c) . . . (1) If it is established that a party failed to file an application for modification of an award because of fraud or facts and circumstances amounting to an estoppel, the party shall apply for modification of an award within 1 year . . . .

Although the general rule is to construe the Workers' Compensation Act liberally in favor of injured employees, "the statute of limitations in LE § 9-736(b)(3) is to be strictly construed." *McLaughlin*, 206 Md. App. at 254. *Accord Stevens v. Rite-Aid Corp.*, 340 Md. 555, 568 (1995) ("The general rule of liberal construction of the Workers' Compensation Act is not applicable to the limitations provision of [LE] § 9-736."). "Thus, '[a]fter five years from the last payment of compensation, [LE] § [9-736(b)(3)] divests the Commission of any authority to exercise its otherwise broad reopening powers.'" *McLaughlin*, 206 Md. App. at 255 (quoting *Vest v. Giant Food Stores, Inc.*, 329 Md. 461, 475 (1993)).[5]

The parties all agree that September 6, 2011, the date that Mr. Crouch deposited his last TTD benefits check, was the triggering date, i.e., the date of the last compensation payment. *Stachowski v. Sysco Food Services of Balt., Inc.*, 402 Md. 506, 510 (2007) (stating that "the term 'last compensation payment' [in LE § 9-736(b)(3)(iii)] is based on the date when the last payment by check was received by the claimant, either directly or by the claimant's attorney or the claimant's authorized agent").[6] As such, the statute of limitations ran five years later, on September 6, 2016.

[5] This statute of limitations does not apply to medical benefits, which are payable as long as causally related medical treatment is required. *See Luby Chevrolet, Inc. v. Gerst*, 112 Md. App. 177, 184 n. 4 (1996) (noting "[t]he limitations provision does not apply to requests for medical benefits").

[6] The parties do not dispute that, pursuant to LE § 9-736(b)(3), the date of the last compensation payment was the latter of the three possible dates, i.e., ((i) the date of the accident; (ii) the date of disablement; or (iii) the last compensation payment. Counsel for

Mr. Crouch argues that his request for TTD was not barred by the statute of limitations because the relevant filing was the August 18, 2015, Issues filed with the Commission. Mr. Crouch asserts that this request for approval of surgery and medical expenses carried with it an implicit request for TTD benefits.

The first time that Mr. Crouch filed a request specifically seeking TTD, however, was on September 13, 2016, more than five years after the last compensation payment. Thus, appellants argue that the claim was barred by the statute of limitations.

This Court's opinion in *Burskirk* is instructive. In that case, appellant received a compensation award after suffering a work injury. 136 Md. App. at 264. Employer and Insurer made their last compensation payment to appellant on March 28, 1990, and the Subsequent Injury Fund made its final payment on July 31, 1992. *Id.* On May 13, 1993, appellant filed a "Petition to Reopen for Worsening Condition" after he received medical treatment from a doctor who recommended an MRI of appellant's lumbar spine. *Id.* Appellant requested that the Commission not schedule a hearing until one was requested, so the Commission did not schedule a hearing date. *Id.* Appellant never withdrew this petition. *Id.* On approximately January 16, 1997, appellant filed Issues with the Commission seeking "medical care—authorization for [an] MRI." *Id.* at 265. Ultimately, the Employer and Insurer agreed to pay for the MRI, and the appellant filed a Request for

appellant advised at oral argument that the date that the check is cashed is used as the date of receipt because it is clear that the claimant has received the check by that date.

Continuance of the June 17, 1997, hearing that had been scheduled by the Commission. *Id.*

On September 15, 1997, the appellant again "filed Issues with the Commission, along with a Request for Reopening, Reconsideration, or Rehearing." *Id.* Appellant this time raised Issues regarding not only medical care and treatment, but also temporary total disability benefits from July 21, 1997, to the present and continuing. *Id.* Employer and Insurer then filed Issues contending that appellant's claim for TTD benefits was barred by LE § 9-736(b). *Id.* Appellant claimed that the May 13, 1993, petition he filed "placed the Commission on notice of his worsening condition," as he never withdrew it. *Id.* at 272. In affirming the Commission, this Court explained that the May 13, 1993, petition "was filed to seek medical benefits, which were paid," and it "did not allege or request a change in disability status." *Id.* We stated that appellant's reasoning "would allow all recipients of workers compensation to file a protective petition for modification and avoid the statute of limitations in the event a change in disability status occurred at a future date," a result contrary to the General Assembly's intent that the statute of limitations provision of the Worker's Compensation Act be construed narrowly. *Id.* This Court accordingly affirmed the Commission's ruling that appellant was barred by LE § 9-736.

Similarly, here, the Issues filed within the five-year statute of limitations related to surgery, and not any request for disability.[7] The first time Mr. Crouch applied for

[7] This contrasts with the Issues filed in 2016, which sought authorization for surgery and TTD.

additional TTD was in 2016, which was after the five-year limitations period had lapsed. Accordingly, we conclude that the Commission erred as a matter of law in its interpretation of the applicability of LE § 9-736(b)(3).

Mr. Crouch contends, however, that appellants should be estopped from arguing that the claim is barred by limitations pursuant to LE § 9-736(c). As indicated, LE § 9-736(c)(1) provides: "If it is established that a party failed to file an application for modification of an award because of fraud or facts and circumstances amounting to an estoppel, the party shall apply for modification of an award within 1 year."

As this Court has explained:

> Whether the doctrine of equitable estoppel should or should not be applied depends upon the facts and circumstances of each particular case, and unless the party against whom the doctrine has been invoked has been guilty of some unconscientious, inequitable, or fraudulent act of commission or omission, upon which another has relied and has been misled to his injury, the doctrine will not be applied. The clear meaning is that if the converse situation exists, the doctrine may be applied.

Stevens, 102 Md. App at 646 (quoting *Bayshore Indus., Inc. v. Ziats*, 232 Md. 167, 176 (1963)).

Initially, this argument is not preserved for this Court's review. Mr. Crouch did not argue to the Commission that the appellants were estopped from raising the statute of limitations by the adjuster's actions. *See Cremins v. Cty. Com'rs of Washington Cty.*, 164 Md. App. 426, 443–44 (2005) (An issue not raised before the administrative agency is not preserved for judicial review.).

Even if the issue was preserved, we would conclude that it is without merit. Here, there has been no showing that the Employer and Insurer are guilty of some "unconscientious, inequitable, or fraudulent act of commission or omission." Advising that the surgery had been authorized, and then suggesting that the Issues be withdrawn because Insurer agreed to pay for the surgery requested, appears reasonable when no request for TTD was included with the surgery request. There is no merit to Mr. Crouch's estoppel argument.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY REVERSED. CASE REMANDED TO THAT COURT WITH INSTRUCTIONS TO REMAND TO THE COMMISSION FOR ENTRY OF AN AMENDED ORDER CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.