

Circuit Court for Anne Arundel County
Case No. C-02-CV-20-002262

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 767

September Term, 2021

FRANCES BRIDDELL

v.

MARYLAND STATE RETIREMENT AND
PENSION SYSTEM

Beachley,
Albright,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: July 6, 2022

*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.

Frances Briddell, an employee of the State of Maryland, filed a claim for accidental disability retirement benefits with the Maryland Retirement and Pension System (“RPS”). Her claim was approved for “ordinary” disability but denied for accidental disability retirement. Ms. Briddell appealed that determination to the Office of Administrative Hearings (“OAH”), and, following a hearing before an Administrative Law Judge (“ALJ”), the OAH affirmed the RPS decision. Ms. Briddell sought judicial review in the circuit court for Anne Arundel County, which affirmed the OAH’s decision.

In her timely appeal, Ms. Briddell presents a single question for our review, which we have restated:¹

Did the ALJ err or abuse his discretion in denying Ms. Briddell’s motion for recusal?

For the reasons to follow, we shall affirm.

BACKGROUND

At all times relevant, Ms. Briddell was employed by Anne Arundel County Public Schools (“AACPS”) as a chief custodian. On August 13, 2014, during the course of her employment, Ms. Briddell tripped over a speaker and landed on her buttocks (the “2014 accident”). Ms. Briddell experienced neck and lower back pain from her injury. She sought medical treatment at Patient First, which included X-rays that revealed

¹ In her brief, Ms. Briddell asks:

Is there an appearance of impropriety when an ALJ deciding a case where the sole issue is a medical question was a previous patient of the State’s medical expert witness?

“degenerative changes” in her spine. She was diagnosed with a cervical sprain and was cleared for active duty; however, she continued to experience neck and back pain.

On March 6, 2015, also during the course of her employment, Ms. Briddell slipped and fell on an icy sidewalk (the “2015 accident”). Ms. Briddell again sought medical treatment at Patient First for neck and back pain. That treatment, which also included X-rays, revealed “degenerative disc and facet disease” in her spine. Ms. Briddell was diagnosed with a cervical and lumbar sprain and was released to light duty work.

Over the ensuing months, Ms. Briddell continued to experience back and neck pain, along with diminished range of motion, and she continued to seek medical treatment. On June 9, 2015, AACPS referred Ms. Briddell to Stanley Friedler, M.D., a board-certified orthopedic surgeon. After examining Ms. Briddell, Dr. Friedler concluded that she had “loss of function in her spine” that was “fully attributable to her pre-existing degenerative disease[,]” not to the 2015 accident. That same month, Ms. Briddell underwent an MRI, which showed “multilevel degenerative dis[c] disease” in her cervical and lumbar spine. Ms. Briddell continued working for AACPS, but in a limited capacity due to her injuries.

In March 2016, Ms. Briddell returned to Dr. Friedler for a follow-up examination. Following that examination, Dr. Friedler amended his 2015 conclusions and reported that Ms. Briddell’s back and neck injuries were at least partially due to the 2015 accident. A few months later, Ms. Briddell was seen by Joshua Macht, M.D., who also concluded that Ms. Briddell’s back and neck problems were partially due to the 2015 accident.²

² Dr. Macht was not identified in the record as an orthopedic specialist.

Subsequently, AACPS informed Ms. Briddell that she could not continue in a light duty capacity, so she went on an approved leave of absence. Ms. Briddell continued to have problems with her spine and back and continued to receive medical treatment.

In March 2018, Ms. Briddell applied for accidental disability retirement benefits. In her application for benefits, she described her disability as cervical disc displacement, spinal stenosis, and lumbar disc displacement, and asserted that her disability was caused by the 2014 and 2015 accidents.

While investigating Ms. Briddell’s claim, RPS arranged for her to be examined by Emily Woolcock, M.D., a board-certified orthopedic surgeon. Dr. Woolcock conducted that examination in August 2018 and opined that Ms. Briddell’s disability was not permanent and was “not the natural and proximate result of the [2014 and 2015] accidents due to her established history of degenerative spine disease.”

In December 2019, RPS arranged for Ms. Briddell to be examined Barry Waldman, M.D., a board-certified orthopedic surgeon. Dr. Waldman concluded that there was “no evidence of disability as the natural and proximate result of the [2014 and 2015] accidents[.]” Dr. Waldman found, rather, that Ms. Briddell’s symptoms were “due to natural degenerative joint disease with no occupational origin.”

In January 2020, Ms. Briddell was approved for ordinary disability retirement, but RPS denied her claim for accidental disability benefits. Ms. Briddell appealed that decision to the OAH, and an evidentiary hearing was held on September 14, 2020.

OAH Hearing

Ms. Briddell testified before the ALJ that she had performed her job without any pain before the 2014 accident, but, following that accident, while she was still able to perform her job, she continued to experience neck and back pain. She testified that, following the 2015 accident, the pain became intolerable, and it severely inhibited her ability to work, perform household chores, and engage in other physical activities.

Several lay witnesses were called on Ms. Briddell's behalf, whose testimony we summarize. Hallie Lowe, a former coworker, testified that Ms. Briddell did not "work up to her ability" following the 2014 accident. Elisabete Brandao, the mother of Ms. Briddell's grandchildren, testified that Ms. Briddell had no trouble with daily activities prior to the accidents but that she "started slowing down" following the accident. Ms. Briddell's husband, Mitchell, likewise testified that he did not observe any problems with Ms. Briddell's ability to perform daily activities prior to the accidents.

Jonathan Dunn, M.D., a board-certified orthopedic surgeon, called by Ms. Briddell, testified that Ms. Briddell had developed arthritis in her neck prior to the accidents, but that it was asymptomatic. He opined that the arthritis became symptomatic following the 2014 accident, and that Ms. Briddell "still was able to do her job[.]" Dr. Dunn stated that the 2015 accident "sort of put [Ms. Briddell] over the top" and that "she was not able to go back to doing her job as a custodian." Dr. Dunn conceded, however, that X-rays of Ms. Briddell's spine taken in 2014 and 2015 "revealed identical findings" and that a "2015 MRI indicated degenerative disc disease in [Ms. Briddell's] cervical and lumbar spine." Dr.

Dunn also conceded that the 2015 MRI of Ms. Briddell’s spine showed no evidence of a sprain or strain.

The RPS called Dr. Waldman as its only witness, and he was accepted as an expert in orthopedic surgery and medicine. Dr. Waldman provided testimony consistent with a report he had completed following his December 2019 examination of Ms. Briddell. His report concluded that Ms. Briddell was suffering from “lumbar degenerative joint disease and cervical degenerative joint disease” and that there was “overwhelming evidence” that Ms. Briddell’s symptoms were “due to natural degenerative joint disease and ha[d] no occupation origin.” He added that there was “no credible mechanism by which [Ms. Briddell’s] minor strain of August 13, 2014, or March 6, 2015, could have resulted in degenerative changes seen on MRI.”

Dr. Waldman provided additional testimony regarding Ms. Briddell’s medical history, treatment history, and injuries. He explained that imaging from 2015 revealed “multi-layered degenerative disc disease with no signs of any trauma” and that those conclusions were supported by subsequent imaging. He further stated that multi-layered degenerative disc disease was typical of a long-term disability, whereas a trauma-induced disability ordinarily presents itself as a “single-level disc disease.”

In addition to the above testimony, the OAH received into evidence, as Joint Exhibit 1, a 259-page binder containing various documents, including records from Ms. Briddell’s visits to Patient First following the 2014 and 2015 accidents; records of Dr. Friedler’s numerous examinations; records of Dr. Macht’s examination in 2016; records of Dr. Woolcock’s examination in 2018; Ms. Briddell’s MRI revelations and other imaging

results from 2014 and beyond; Dr. Waldman’s 2019 report; and myriad other medical records.

OAH’s Findings

Following the hearing, the presiding ALJ issued a written decision affirming the RPS denial of Ms. Briddell’s claim for accidental disability benefits. The ALJ found that Ms. Briddell had failed to establish a causal connection between the 2014 and 2015 accidents and her disabling injury. The ALJ found Dr. Waldman’s analysis and conclusions to be credible. He explained that Dr. Waldman’s testimony was supported by Ms. Briddell’s medical records, which showed “degenerative changes and arthritis.” The ALJ also noted that the 2015 MRI of Ms. Briddell’s spine “objectively demonstrated that [Ms. Briddell’s] sprain/strain from the 2015 incident had resolved and that she had multi[-]layered disc disease.”

The ALJ found Ms. Briddell’s expert, Dr. Dunn, to be less persuasive, noting that Dr. Dunn could not point to any anatomical changes in Ms. Briddell’s spine as a result of the 2014 and 2015 accidents, which changes would have been indicative of an acute injury. He noted further that Dr. Dunn had confirmed that Ms. Briddell was suffering from degenerative disc disease at the time of the accidents. The ALJ further recalled that Dr. Dunn had admitted on cross-examination that the 2015 MRI showed “no evidence of a sprain/strain.”

The OAH also highlighted Dr. Friedler’s various examinations, noting that, while Dr. Friedler had concluded in 2017 that Ms. Briddell’s injuries were caused in part by the accidents, Dr. Friedler had previously concluded that Ms. Briddell’s injuries were “fully

attributable to her pre-existing degenerative disease[.]” The OAH found Dr. Friedler’s initial conclusions more credible because they were “more contemporaneous to the March 2015 injury” and concluded that it made “little sense” that Dr. Friedler’s initial report “would indicate resolution of [Ms. Briddell]’s sprain/strain while his later reports would indicate otherwise.” The ALJ also noted that Dr. Dunn, Dr. Friedler, and Dr. Waldman had all examined Ms. Briddell’s MRI results from 2015 and concluded that there was no sign of a sprain or strain. Finally, the ALJ found that, while Ms. Briddell was a credible witness, her testimony did not affect the outcome of the case because “the objective evidence of her injuries outweighed her subjective characterization of her pain.”

Ms. Briddell thereafter filed a petition for judicial review in the circuit court. Following a hearing, the court affirmed the OAH’s decision. This timely appeal followed. Additional facts will be supplied below.

DISCUSSION

Recusal Motion

Ms. Briddell’s sole complaint in the instant appeal concerns an issue that was raised just prior to Dr. Waldman’s direct testimony, during which the presiding ALJ stated that he may have some familiarity with Dr. Waldman. Before he gave any testimony, the ALJ remarked that Dr. Waldman’s “name seems very familiar[.]” The ALJ then asked if Dr. Waldman had “treated [him] in the past for anything?” Dr. Waldman responded: “If I did, I don’t remember, and I apologize.”

The ALJ then stated that he remembered “going to an orthopedic office in Quarry Lake” and that he was “not sure if Dr. Waldman is at that office or not” or if Dr. Waldman

had treated him for a minor injury he “might have had from running or something.” After Ms. Briddell’s counsel voiced concerns about the ALJ’s ability to be impartial, the ALJ stated for the record:

My memory is quite dim as to what occurred or did not occur with Dr. Waldman. In fact, there’s a part of my memory that seems to – that – that I’m thinking was that he was one of many doctors who might have been mentioned in that practice when I was looking for an appointment and I don’t remember if I actually ended up having an appointment with him due to availability.

And my only encounter with that practice was a simple muscle strain that I had from running that was treated and I was seen by them, they did an x-ray, and then I did physical therapy with the physical therapy part that was attached to that practice for three weeks tops. That was it.

So, ... I do not find in any way that my interaction – my possible interaction with Dr. Waldman – and I can’t even verify that I did have any interaction with him or my interaction with that orthopedic practice at Quarry Lake will, in any way, unduly influence my ability to render a fair judgment in this matter and will not bias my opinion regarding the opinions that I’m offered by all of the evidence – all of the witnesses in this case.

Following that colloquy, Dr. Waldman was asked by counsel for RPS how many physicians were in his practice and whether he remembered treating the ALJ. Dr. Waldman responded that there were 14 physicians in his practice and that he had no recollections of having treated the ALJ. Ms. Briddell’s counsel then made a formal motion for recusal. After further discussion with counsel and Dr. Waldman, the ALJ denied the motion, reiterating that he had no concerns about his ability to render a fair judgment based solely on the evidence.

Parties' Contentions

Ms. Briddell contends that the ALJ erred in declining to recuse himself. She asserts that an appearance of impropriety exists when an ALJ is “a previous patient of the [RPS] medical expert witness[.]” She argues that a reasonable person in the ALJ’s position would have recused himself under the circumstances presented here, where the RPS’s only witness was providing medical testimony and where the ALJ who was to decide the merits of that testimony had “firsthand knowledge and a favorable impression of the skills and abilities of [the witness’s medical practice] based on their healing his injury.” Ms. Briddell also asserts that Dr. Waldman’s testimony was by no means unassailable, which made recusal all the more necessary. Ms. Briddell highlights certain portions of Dr. Waldman’s cross-examination as evidence of the “inconsistencies, contradictions, and biases” of Dr. Waldman’s direct testimony.

RPS contends that the ALJ did not abuse his discretion in not recusing himself. RPS argues that Ms. Briddell, in moving for recusal, failed to establish that the ALJ’s alleged relationship with Dr. Waldman created an appearance of impropriety such that recusal was warranted. RPS argues further that Ms. Briddell’s appellate argument, in which she highlights issues raised during her cross-examination of Dr. Waldman, improperly relies on facts that had not yet been raised at the point at which the ALJ ruled on the recusal motion.

Analysis

“[P]rocedural due process ... requires that administrative agencies performing adjudicatory or quasi-judicial functions observe the basic principles of fairness as to parties

appearing before them.” *Regan v. State Bd. of Chiropractic Exam’rs*, 355 Md. 397, 408 (1999) (citation and quotations omitted). A necessary component of a fair administrative hearing is an impartial ALJ, and recusal is sometimes necessary to preserve that fairness. *Sewell v. Norris*, 148 Md. App. 122, 136 (2002). In fact, the Code of Maryland Regulations (“COMAR”) requires an ALJ to “withdraw from participation in an [OAH] proceeding in which personal bias or other reasons render the ALJ unable to remain impartial, or in which an appearance of impropriety may reasonably be inferred from the facts.” COMAR 28.02.01.11(C)(1)(a).

“In determining whether there is either actual bias or an appearance of impropriety on the part of a decision maker in a judicial or quasi-judicial proceeding, we begin with the presumption of impartiality.” *Regan*, 355 Md. at 410. “[T]here is a strong presumption in Maryland, and elsewhere, that judges are impartial participants in the legal process, whose duty to preside when qualified is as strong as their duty to refrain from presiding when not qualified.” *Jefferson-El v. State*, 330 Md. 99, 107 (1993) (internal citations omitted). Moreover, the Court of Appeals has held “that the party moving for recusal bears a heavy burden to overcome the presumption of impartiality.” *Abrishamian v. Barbely*, 188 Md. App. 334, 344 (2009) (quoting *S. Easton Neighborhood Ass’n, Inc. v. Town of Easton*, 387 Md. 468, 499 (2005)). “Consequently, the decision to recuse oneself ordinarily is

discretionary and will not be overturned except for abuse.” *Conner v. State*, 472 Md. 722, 738 (2021) (citations and quotations omitted).³

In determining whether a judge abused his or her discretion in denying a recusal request, “we look for an appearance of impropriety rather than ‘delving into the subjective mindset of the challenged’ decision maker.” *Baltimore Police Dep’t v. Antonin*, 237 Md. App. 348, 361 (2018) (quoting *Regan*, 355 Md. at 411). In that sense, the “test to be applied is an objective one which assumes that a reasonable person knows and understands all the relevant facts.” *Jefferson-El*, 330 Md. at 108 (citations, quotations, and emphasis omitted). “Like all legal issues, judges determine appearance of impropriety ... by examining the record facts and the law, and then deciding whether a reasonable person knowing and understanding all the relevant facts would recuse the judge.” *Id.* (citations and quotations omitted).

Against that backdrop, we hold that the ALJ in the present case did not abuse his discretion in denying Ms. Briddell’s recusal motion. We are not persuaded by Ms. Briddell’s general assumptions that the ALJ was “a previous patient” of Dr. Waldman or that the ALJ had “firsthand knowledge and a favorable impression” of Dr. Waldman. When the ALJ raised the question at trial, he stated only that Dr. Waldman’s name “seemed familiar” and that Dr. Waldman may have been part of an orthopedic practice the ALJ had

³ Both parties have stated that we should review the ALJ’s decision not to recuse for an abuse of discretion. We note that an abuse-of-discretion standard of review is not expressly contained in the statute providing for judicial review here. *See* Md. Code State Gov’t § 10-222(h). For purposes of this case, however, we will adopt the parties’ assumption (without so deciding) that an ALJ’s denial of a motion for recusal warrants an abuse of discretion review, in the same manner as a judge’s denial of such a motion.

visited for an injury sometime in the past. After Dr. Waldman indicated that he did not remember ever treating the ALJ, the ALJ admitted that his memory of the event was “quite dim” and that he could not remember if he had received treatment from Dr. Waldman or if Dr. Waldman was even part of the orthopedic practice he had visited. The ALJ added that he had gone to the practice for a “simple muscle strain[,]” that he was treated, and that he had received physical therapy “for three weeks tops.” The ALJ then concluded that he did not believe that his “possible interaction with Dr. Waldman” would have any impact on his ability to be impartial.

From those comments, we cannot reasonably construe a suggestion that the ALJ had, in fact, been a patient of Dr. Waldman or that he had firsthand knowledge of Dr. Waldman’s abilities as a doctor. Indeed, it is not entirely clear from the record that Dr. Waldman was even part of the orthopedic practice that the ALJ had visited. Nevertheless, even were we to assume that Dr. Waldman was a member of that practice, the ALJ provided no details from which it could be reasonably inferred that the ALJ had formed any opinion about Dr. Waldman or the orthopedic practice in general. There is nothing to indicate that the ALJ had a “favorable” impression of either Dr. Waldman or the orthopedic practice. Rather, the only reasonable inference that could be drawn from the record is that, at some point in the past, the ALJ was treated for a muscle strain at an orthopedic practice at which Dr. Waldman may or may not have been a participant.

We cannot conclude that a reasonable person, knowing and understanding the relevant facts then before the ALJ would have called for his recusal. That the ALJ may have been treated at Dr. Waldman’s medical practice is, absent more, simply too innocuous

to create an appearance of impropriety. *Cf., e.g., Nathans Assocs. v. Mayor and City of Council of Ocean City*, 239 Md. App. 638, 660 (2018) (no appearance of impropriety in property dispute, where trial judge, in his previous capacity as city solicitor, wrote a letter concerning the subject property); *Hill v. Hill*, 79 Md. App. 708, 716 (1989) (no appearance of impropriety where judge personally knows or has a prior employment relationship with one of the parties); *Cook v. State*, 35 Md. App. 430, 441 (1977) (no appearance of impropriety in criminal trial, where the crime victim’s wife was the manager of the trial judge’s election campaign).⁴ As such, the ALJ did not abuse his discretion in denying Ms. Briddell’s recusal motion.

Ms. Briddell argues that the “relevant facts” bearing on the issue of recusal include information developed during Dr. Waldman’s cross-examination. That information, according to Ms. Briddell, included: that Dr. Waldman received substantial fees for testifying as an expert witness in this and various other cases; that Dr. Waldman’s *curriculum vitae* demonstrated that his expertise was in the knees and hips, not the spine; that Dr. Waldman’s conclusions regarding Ms. Briddell’s pre-existing arthritis contained various inconsistencies; and, that Dr. Waldman implied that Dr. Friedler was not wrong in concluding that Ms. Briddell had a cervical strain or sprain due to the 2015 accident. Ms. Briddell argues that those facts weigh in favor of recusal.

We remain unpersuaded. We fail to see the relevance of Dr. Waldman’s cross-examination in relation to the ALJ’s recusal decision, as his ruling preceded Dr. Waldman’s

⁴ Because there is ample Maryland authority on the issue of recusal, we need not resort to consideration of the out-of-state cases relied on by the RPS.

direct testimony and well before any of the information cited by Ms. Briddell was disclosed in his cross-examination. In reviewing the propriety of the ALJ's ruling, we consider only information that was available to him at that juncture. *See Nathans Assocs.*, 239 Md. App. at 660 ("On appeal, we will consider only the issue that triggered the motion for recusal at trial."). In sum, we conclude that Ms. Briddell has not met the heavy burden to overcome the presumption of impartiality imposed in Maryland jurisprudence on a litigant who seeks recusal of a presiding judicial officer.

Even were we to consider that information, we would still conclude that the ALJ did not err in denying Ms. Briddell's motion to recuse. The ALJ stated emphatically that he would decide the case based solely on the evidence and irrespective of any prior interaction he may have had with Dr. Waldman or his orthopedic practice. Moreover, we find nothing in the record of the OAH hearing to indicate that the ALJ was anything but fair and impartial, nor is there anything to indicate that the ALJ treated Dr. Waldman more favorably than any other witness.

The ALJ's impartiality was likewise evident in the 20-page written decision he issued following the hearing. That decision set forth, in considerable detail, the relevant facts, the evidence presented, and the ALJ's conclusions based on that evidence. In reaching those conclusions, the ALJ provided a thorough explanation of why he credited Dr. Waldman's testimony and why he concluded that Ms. Briddell had failed to show that her disability was caused by the 2014 and 2015 accidents. The ALJ also explained why he found Ms. Briddell's expert, Dr. Dunn, to be less persuasive than Dr. Waldman. Each of those determinations was based on evidence, such as Ms. Briddell's medical records, that

was independent of the witness’s respective testimony.⁵ From the record before us, we cannot reasonably infer an appearance of impropriety. That the ALJ chose to credit Dr. Waldman’s testimony is hardly evidence of impropriety. *See In re J.C.N.*, 460 Md. 371, 387 (2018) (“[I]t is the agency’s province to resolve conflicting evidence and to draw inferences from that evidence.”) (citation and quotations omitted).

Finding neither error nor abuse of discretion in the ALJ’s ruling on Ms. Briddell’s motion to recuse, we shall affirm.⁶

**JUDGMENT OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
AFFIRMED; COSTS ASSESSED TO
APPELLANT.**

⁵ Ms. Briddell argues that there “was no other evidence offered by the [RPS] in support of its position[.]” That statement is not supported by the record.

⁶ We have not been called upon to review the merits of the decision of the OAH on Ms. Briddell’s claim. Had we been, we would not have, on this record, been persuaded of either error or abuse of discretion by the ALJ.