Circuit Court for Saint Mary's County
Case No. C-18-CV-22-000300

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1028

September Term, 2024

IN THE MATTER OF BRUCE OAKLEY

Friedman,
Albright,
Getty, Joseph M.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Albright, J.

Filed: June 18, 2026

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Appellant Planned Building Services, Inc. ("PBS")[1] is Appellee Bruce Oakley's former employer and the place where, in 2019, he injured his shoulders. In this appeal from the Circuit Court for St. Mary's County's judgment that Mr. Oakley had a permanent partial disability, whole person, of 85% to his right shoulder and 5% to his left shoulder, PBS challenges the circuit court's subject matter jurisdiction as well as its failure to find that Mr. Oakley had violated his discovery obligations. Thus, PBS poses two questions for our review:

> I. Did the circuit court exceed its subject matter jurisdiction by allowing the jury to consider the industrial loss of use issue which had not been previously heard by the Workers' Compensation Commission?
>
> II. Did the circuit court err by failing to enforce the Claimant's failure to comply with the Maryland rules of discovery?

Regarding PBS's first question, we conclude that because Mr. Oakley's claim was for permanent partial disability, a claim he had raised before the Workers' Compensation Commission, the circuit court did not exceed its subject matter jurisdiction in allowing the jury to consider Mr. Oakley's claim. But, we further conclude that the circuit court reversibly erred by failing to find that Mr. Oakley violated his discovery obligations. Accordingly, we will reverse the circuit court's judgment and remand for a new trial.

Below, after summarizing the relevant facts and procedural history, we discuss the pertinent parts of Maryland's workers' compensation law. We then take up PBS's questions.

[1] Appellant Berkshire Hathaway Homestate Insurance Company is PBS's workers' compensation insurer. We refer to the Appellants here collectively as "PBS."

BACKGROUND[2]

Mr. Oakley is a maintenance technician who injured his shoulders when pulling trash from garbage bins while working at PBS on December 12, 2019. Mr. Oakley filed a claim with the Workers' Compensation Commission on February 14, 2020. After undergoing surgery on his right shoulder, Mr. Oakley reached maximal medical improvement on or about July 15, 2021, with a permanent lifting restriction of 25 pounds. Because PBS could not accommodate Mr. Oakley's restriction, it authorized vocational rehabilitation for him. On March 2, 2022, Mr. Oakley was offered, and accepted, a full-time hourly position with a subsequent employer, Advanced Recovery Systems, LLC ("ARS"). He started work with ARS on March 28, 2022.

On September 12, 2022, the Commission held a hearing on the nature and extent of Mr. Oakley's permanent partial disability. The Commission considered impairment ratings from two orthopedic surgeons, Edward R. Cohen, M.D. ("Dr. Cohen") and Frederic L. Salter, M.D. ("Dr. Salter"). Mr. Oakley testified about the ongoing pain in his shoulders when lifting and reaching. Mr. Oakley's injuries prevented him from continuing his job at PBS, which involved "too much heavy lifting[,]" and also limited his ability to interact with his grandchildren and perform activities at home.

[2] Our summary of the facts is drawn from the record as a whole, including the circuit court's hearing on PBS's post-trial motions. Because PBS contends that it was prejudiced at trial by Mr. Oakley's discovery failures, our summary necessarily includes the evidence discovered by PBS in conjunction with its post-trial motions.

At the hearing, Mr. Oakley acknowledged that he had a back issue that pre-existed the injury to his shoulders. For his back, he had been prescribed oxycodone and methadone. He denied being on these medications at the time he injured his shoulders. He also denied having taken the medications at the time of the hearing.

The Commission found that Mr. Oakley suffered a permanent partial disability "amounting to 30% industrial loss of use of the body, 25% is reasonably attributable to the accidental injury (left shoulder, 5% and right shoulder, 20%) and 5% is due to a preexisting condition (right shoulder)." The Commission's September 14, 2022 Order awarded Mr. Oakley $372.00, payable weekly, for a period of 125 weeks (totaling $46,500). Mr. Oakley then petitioned for judicial review in the circuit court and demanded a jury trial. PBS cross-petitioned.

Mr. Oakley Sees Dr. Griffith for Unrelated Lower Back Pain

About seven months later, while the case was pending in the circuit court, on or about April 21, 2023, Mr. Oakley saw Paul Griffith, M.D. ("Dr. Griffith"), due to recurrence of Mr. Oakley's lower back pain. Dr. Griffith examined Mr. Oakley's lumbar spine.[3] After noting that Mr. Oakley had responded favorably to injections, Dr. Griffith

[3] PBS discovered this treatment note on October 27, 2023, after the conclusion of the jury trial.

found that "[t]oday's examination is consistent with recurrence activity related lower back pain as a result of lumbar facet arthropathy."[4]

Dr. Griffith told Mr. Oakley that his condition was "degenerative." Specifically, Dr. Griffith noted "I described these findings to the patient today with the natural progression of degenerative spinal disease." After discussing treatment options with Mr. Oakley, Dr. Griffith "placed a restriction on him so that he is not required to do any further painting. He will return to this clinic 6 weeks for reevaluation."

Mr. Oakley Resigns From ARS

About six weeks after seeing Dr. Griffith, Mr. Oakley provided ARS a "disability slip." According to Mr. Oakley, he twice provided the "slip" to ARS but ARS did not accept it because even though the "slip" "came from [his] doctor's[,]" it was not on the doctor's letterhead.[5]

In response to ARS not accepting the "slip," according to Mr. Oakley, he notified ARS of his intention to "terminate [his] employment." Thus, on June 2, 2023, Mr. Oakley

[4] Lumbar facet arthropathy has been found to be a degenerative condition "that typically occurs secondary to age, obesity, poor body mechanics, repetitive overuse and microtrauma." Steven J. Mann, Omar Viswanath, & Paramvir Singh, Lumbar Facet Arthropathy, National Library of Medicine (July 4, 2023), https://www.ncbi.nlm.nih.gov/books/NBK538228/. It is a form of arthritis impacting the synovial facet joints. *Id.* It may cause significant lower back pain. *Id.*

[5] According to trial evidence, ARS made this request of Mr. Oakley on June 1, 2023.

signed a letter[6] drafted by his supervisor, Mr. Richcreek, indicating that Mr. Oakley was giving two weeks' notice and that his last day of work would be June 16, 2023.[7]

Regarding his shoulders, i.e., the injury for which PBS was compensating Mr. Oakley, Mr. Oakley never complained to ARS or displayed any problems with them. Mr. Oakley was hired by ARS in March 2022 and worked there until June 2023. Mr. Richcreek was Mr. Oakley's direct supervisor and saw him daily. During that time, and as Mr. Richcreek would later testify in conjunction with PBS's post-trial motions, Mr. Richcreek never observed "any problems or difficulties or work issues with either [of Mr. Oakley's] shoulder[s]." Mr. Oakley never complained to Mr. Richcreek about his shoulders or sought any accommodations from Mr. Richcreek regarding his shoulders. Mr. Oakley never supplied a doctor's note about his shoulders to Mr. Richcreek.

However, Mr. Oakley did complain to ARS about his back and his foot and sought "accommodations for those areas[,]" specifically a restriction of "no painting.". On June 1, 2023, Mr. Oakley presented the "slip"[8] from Dr. Griffith to Mr. Richcreek. Mr. Richcreek "sent it to the H.R. team." On the "slip[,]" according to Mr. Richcreek, "the doctor wrote on top of that just like it was handwritten in and H.R., my H.R. team,

[6] The letter said, "[e]ffective 06/02/2023, I am submitting my two weeks' notice to terminate my employment with Advanced Recovery System. My last day of employment will be on 06/16/2023."

[7] June 2, 2023 was a Friday. According to Mr. Richcreek, Mr. Richcreek urged Mr. Oakley to think about his decision over the weekend. On Monday, June 5, 2023, Mr. Oakley confirmed to Mr. Richcreek that he was quitting.

[8] Mr. Richcreek referred to this alternately as a "slip" and a "doctor's note."

questioned whether or not it was from the doctor or not and instructed me to inform [Mr. Oakley] that we needed a document from the doctor on his letterhead. And he was upset with that. [Mr. Oakley] said, 'That's the note I have. That's it.'" Mr. Oakley then told Mr. Richcreek he was resigning. After suggesting that Mr. Oakley think about it over the weekend, Mr. Richcreek "accepted" Mr. Oakley's resignation notice the following Monday, June 5, 2023.

Mr. Oakley Does Not Disclose His Visit to Dr. Griffith or his Resignation from ARS in Discovery

In the circuit court, during the discovery period, Mr. Oakley did not disclose that he had seen Dr. Griffith or that he had resigned from ARS. On February 2, 2023, the circuit court set a discovery deadline of June 3, 2023 and a two-day jury trial for October 11-12, 2023. PBS propounded Interrogatories to Mr. Oakley related to his employment, medical issues, and treatment. With regard to his employment history, Interrogatory No. 7 asked:

> 7. State your employment history for the past ten (10) years, (whether full-time or part-time) including for each employer, the full names and addresses of each business, the inclusive dates of employment, the name of your supervisor, your average weekly wage, your occupation, the nature of your duties with each, and the reasons for any changes in duties or employers, the date of termination and the reason therefor.

With regard to Mr. Oakley's health, Interrogatory No. 13 likewise asked Mr. Oakley to identify his primary care physician and any other healthcare provider he was seeing for any reason.

> 13. Provide the name of your primary care physician and whether you are presently under the care of any other physician or any other healthcare

> provider, for any reason, and, if so, the name and address of same, and the date of the last visit for treatment or examination.

On March 29, 2023, Mr. Oakley answered these interrogatories but did not mention anything about back pain or being under the care of a provider for back pain.

When Mr. Oakley saw Dr. Griffith for back pain within the month, i.e., in April 2023, Mr. Oakley did not supplement his answer to Interrogatory No. 13. Nor, five weeks later, did he supplement his answer to Interrogatory No. 7 to disclose that he had notified ARS of his intent to resign or, ultimately, that he had resigned.

At his June 13, 2023 deposition,[9] when he was asked about his employment, Mr. Oakley did not disclose his intended resignation from ARS.[10] Mr. Oakley testified that ARS was his current employer and that he had just gotten a raise.

> [PBS's COUNSEL]: Now, you stated that you were out of work for two and a half years. You did eventually go back to work for another employer --
>
> [MR. OAKLEY]: Yes.
>
> [PBS's COUNSEL]: Is that correct? And that was American Recovery Systems?
>
> [MR. OAKLEY]: Yes sir.
>
> [PBS's COUNSEL]: Is that your current employer?
>
> [MR. OAKLEY]: Yes.
>
> . . .
>
> [PBS's COUNSEL]: Now, sir, are you currently working full duty or are you working with certain restrictions?
>
> [MR. OAKLEY]: Full duty.

[9] Here, the parties raise no issue about the fact that this deposition occurred after the June 3, 2023 discovery deadline.

[10] At his deposition, Mr. Oakley did not disclose his April 21, 2023 visit to Dr. Griffith, but he was not asked about it.

[PBS's COUNSEL]: Okay. And are you paid hourly?

[MR. OAKLEY]: Yes

[PBS's COUNSEL]: And do you know how much you're making?

[MR. OAKLEY]: $18.50

[PBS's COUNSEL]: Has there been any change to your rate of pay? Have you had any raises?

[MR. OAKLEY]: Just got a raise.

Mr. Oakley's Counsel Notifies PBS that Mr. Oakley Resigned

On October 3, 2023, five days before the scheduled jury trial, Mr. Oakley's counsel telephoned PBS's counsel and reported that Mr. Oakley was no longer employed by ARS "as a direct result of the accidental injury."[11]

PBS's Pretrial Motions

A. PBS Moves to Postpone/Continue the Jury Trial and to Exclude Evidence of Mr. Oakley's having resigned from ARS.

On October 5, 2023, PBS moved to postpone or continue the October 11–12, 2023 jury trial. PBS argued that Mr. Oakley's alleged change in employment status was a "material change of fact well outside the discovery period." PBS pointed out that during discovery, "the issue of industrial loss of use of the body [was] moot" because Mr. Oakley had remained employed with ARS "throughout the course of discovery and beyond." During his June 13, 2023 deposition, PBS pointed out, Mr. Oakley had testified that he was then "working full duty and just received a raise."

[11] This was apparently a reference to Mr. Oakley's accidental shoulder injury, not the recurring lower back pain that Dr. Griffith had diagnosed in Mr. Oakley on April 21, 2023. Neither party contends otherwise.

PBS argued that a postponement or continuance of the trial date was necessary to allow it to conduct additional discovery, including from Mr. Oakley directly. "[W]ithout the ability to conduct a proper investigation and additional discovery regarding [Mr. Oakley's] employment status[,]" PBS concluded, it "would be severely prejudiced to proceed to trial[.]"

Also on October 5, 2023, PBS moved in limine to restrict Mr. Oakley from referencing any issues that were not tried before the Commission, including "evidence and/or argument regarding [Mr. Oakley]'s current work status and present complaints[.]" Mr. Oakley opposed PBS's motion, arguing that because "[t]he issue of Permanent Partial Disability was raised at the Commission and is a proper issue for this appeal[,]" "[e]vidence of [Mr. Oakley]'s current work status and present complaints are indicia of the permanent disability suffered by [Mr. Oakley] and are appropriate to be heard by this jury as it is in every P[artial]P[ermanent]D[isability] appeal."

On October 6, 2023, the same day Mr. Oakley filed his opposition to PBS's motion in limine, PBS learned via an email from ARS that Mr. Oakley had supplied a "doctor's note, placing him on restrictions of no painting until he was reevaluated by the provider." The email did not identify which doctor had provided the note or why Mr. Oakley had seen that doctor.

On October 10, 2023, the circuit court denied PBS's motion to postpone or continue the jury trial without explanation.

B. PBS's Second Motion to Continue the Jury Trial

The next day, which was the first day of the scheduled jury trial, PBS again moved, this time orally, for a continuance. PBS repeated that "last week" it found out that Mr. Oakley was no longer working for ARS, his subsequent employer, and that one of the issues was "industrial loss of use, basically, [Mr. Oakley's] earning capacity." PBS reiterated that during discovery, Mr. Oakley was still working with ARS, earning "roughly" one dollar less per hour than what he had been earning at PBS, meaning that "the issue of industrial loss of use was *de minimus*, if moot at all."

PBS then detailed how it would be prejudiced if it had to proceed to trial that day, including that it would not be able to verify why Mr. Oakley left ARS.

> So we would ask that the trial be continued so that we have the ability *to, first, subpoena the subsequent employer, who is a non-party witness to be able to verify the cause or the reasons for the employment separation*. We have nothing to rebut Claimant's testimony today. We also have no ability to subpoena and get the records back in time from the Department of Labor to find out if Mr. Oakley has applied for unemployment benefits. And with that, I would submit.

(Emphasis added).

Though it recognized that PBS would not know whether Mr. Oakley "is answering honestly" when PBS cross-examined him, the circuit court again denied PBS a continuance.

> [THE COURT]: I agree with [Mr. Oakley] on this point which is that the Court, I don't believe, should continue the case every single time something changes. It could change again five more times before we got to the next trial date. And if the Court grants a continuance -- if the Court is going to grant a continuance, the Court needs to be doing so for a reason that the Court believes is necessary. *In this particular case, I do think that, [PBS], you will have the opportunity to elicit testimony in cross-examination. I think that you*

> *can certainly ask questions about [Mr. Oakley's] employment since the time of this injury and up until the current. And while it's true you may not know whether or not [Mr. Oakley] is answering honestly because you don't necessarily have documentation or paperwork, I think you'll be able to ask [Mr. Oakley] the questions and find out what the current status is if that's something that you think is relevant and the Court agrees is relevant.*

(Emphasis added).

Regarding PBS's motion in limine, the circuit court made clear that the trial would be limited to the issues that were raised before the Commission (which included industrial loss), but that new facts or evidence would be admissible. The circuit court decided that Mr. Oakley's counsel could first question Mr. Oakley outside of the presence of the jury about his employment status so that PBS would have some information about Mr. Oakley's reasons for resigning.

Outside of the presence of the jury, Mr. Oakley explained that he worked for ARS[12] after he stopped working for PBS.[13] At ARS, he did plumbing, electrical, and mechanical work but did not lift heavy items due to the permanent physical restriction placed on him by his doctor to not lift over twenty-five to thirty pounds. At the time of Mr. Oakley's deposition, he was still employed by ARS. At the time of trial, Mr. Oakley was unemployed and no longer working at ARS because "they want[ed] me to lift too much weight" and he could not do so. Mr. Oakley resigned on June 16, 2023, but did not

[12] We note that in the transcript, counsel refers to "American Recovery Service." However, we read such references to mean "Advanced Recovery Service."

[13] By this point, Mr. Oakley still had not disclosed his April 21, 2023 visit to Dr. Griffith.

indicate in his resignation his reasons for leaving.[14]

The Trial

The circuit court held a jury trial on October 11 and 12, 2023. Dr. Salter testified as a witness for Mr. Oakley by way of his deposition, a video of which was played for the jury. Mr. Oakley was also called on his own behalf and testified in person. PBS called Dr. Cohen by way of deposition, a video of which was also played for the jury.

A. Mr. Oakley's Opening Statement

Mr. Oakley's Counsel stated that Mr. Oakley was disabled to the extent that it would prevent him from performing "most of the work he was qualified for[,]" among other contentions.

B. Dr. Salter's Testimony

On behalf of Mr. Oakley, Dr. Salter testified that the impairment for Mr. Oakley's left shoulder was 15 percent and the impairment for his right shoulder was 44 percent, exclusively attributable to the workplace injury. He diagnosed Mr. Oakley with a "full-thickness tear" in his right supraspinatus tendon and a sprain in his left shoulder. Based on his own analysis of Mr. Oakley, Dr. Salter determined that Mr. Oakley's range of motion was "very limited" for his right shoulder, and less so for his left.

C. Mr. Oakley's Testimony

In his testimony to the jury, Mr. Oakley did not disclose any information regarding

[14] PBS subsequently discovered that Mr. Oakley had submitted his two-weeks notice of resignation to ARS on June 2, 2023, prior to his deposition.

a back condition or his treatment by Dr. Griffith. Instead, Mr. Oakley stated that he had never injured his shoulders, nor did he seek medical treatment for his shoulders, before December 12, 2019. He testified as well that his only previous complaints were occasional soreness from work. Mr. Oakley recounted getting surgery and going through physical therapy for his shoulders, which improved the condition of his shoulders, but did not enable him to be able to perform the same work that he had been performing prior to his injury.

While undergoing physical therapy, Mr. Oakley was released from his employment with PBS. He received vocational rehabilitation from the Workers' Compensation Commission, which ultimately culminated in his working for ARS. Mr. Oakley testified that he was informed ARS would accommodate his disability, but his supervisor[15] informed him that he would be required to lift up to 50 pounds. His co-workers assisted him with those elements of his work. At home, Mr. Oakley testified, he was unable to lift his grandchildren, play catch, cook, and clean easily, all due to the pain in his shoulders.

Mr. Oakley indicated that as a result of the injury and his educational experience, there is no job in his community that he is able to do "at this time."

On cross-examination, Mr. Oakley acknowledged having attempted to supply

[15] Before post-trial motions were filed, the parties and their counsel referred to Mr. Oakley's supervisor as Mr. Briscreek. Before the post-trial motions hearing, they came to discover that this was Mr. Richcreek. Therefore, we read references to Mr. Briscreek to mean Mr. Richcreek.

ARS with a doctor's note, but did not disclose that that note came from Dr. Griffith or that Dr. Griffith had diagnosed Mr. Oakley with recurring lower back pain. When asked why he resigned, Mr. Oakley testified that it was because ARS would not accept the doctor's note.

> [PBS]: And the only reason you resigned was because they asked you for an updated disability slip on a doctor's letterhead; is that correct?
>
> [Mr. Oakley]: Well, I have them two of them. They didn't accept neither one of them, so --
>
> [PBS]: Because it wasn't on a doctor's letterhead; is that correct?
>
> [Mr. Oakley]: Yes, it was.
>
> [PBS]: The first one was not; is that correct?
>
> [Mr. Oakley]: It came from my doctor's.[16]

D. Dr. Cohen's Testimony

On behalf of PBS, Dr. Cohen testified that, after his surgery, Mr. Oakley had "a 15 percent permanent partial impairment to his right shoulder" not attributable to the accident and no impairment to the left shoulder. He also diagnosed Mr. Oakley with pre-existing arthritis and bone spurs near his shoulders.

E. Closing Arguments

In closing, Mr. Oakley's Counsel argued that his injury was so severe as to prevent him from doing much of the work for which he was previously qualified:

> So what career is left for Mr. Oakley? What jobs can he do based on his education, his experience and now these limitations that only existed after this injury? That's what I posit to you is disability.

[16] It was only after trial that PBS learned that the "updated disability slip" that Mr. Oakley gave ARS was the April 21, 2023 note from Dr. Griffith, in which he diagnosed Mr. Oakley with lower back pain.

He also argued that Mr. Oakley's complete wage loss is a factor to consider in finding industrial loss of use:[17]

> Is he making less money? Well, with the job that he was able to get after this injury when the Employer could no longer employ him, he was making a dollar less per hour. *Now, he's making all of that less per hour*, because he's not working.

(Emphasis added).

In contrast, PBS argued that the Commission fairly and reasonably determined that Mr. Oakley's percentage disability was lower than he contended. PBS added that it had helped Mr. Oakley find a job at ARS that accommodated his disability. PBS argued that Mr. Oakley would have been able to find another job that would accommodate him had he continued to look for work after leaving ARS.

F. Verdict

On October 12, 2023, the jury returned its verdict, and the circuit court entered judgment accordingly. The jury found that the Commission's award was incorrect, and

[17] In full, Mr. Oakley argued that he was effectively unable to work at all, causing him to rely on social security benefits, implying a 100% industrial loss of use:

> [W]hen we talk about the loss of earning potential, that's one factor that you look at for industrial loss. Is he making less money? Well, with the job that he was able to get after this injury when the Employer could no longer employ him, he was making a dollar less per hour. Now, he's making all of that less per hour, because he's not working. . . . [W]hen you ask yourself, back in the jury room, what can Mr. Oakley do, physically with his -- taking him as he was at the time of this injury and then adding on this disability, what job is he able to get hired for, that he's able to do and earn money safely with those limitations? That's the industrial loss. Now, [Appellants' Counsel] brought up Social Security and that he's applied for Social Security. Well, what option does he have? What option does he have to support himself when he's not able to go back to work**.**

that Mr. Oakley's disability amounted to 5% for his left shoulder and 85% for his right shoulder, with no percentage being due to a pre-existing condition.

G. Post-Trial Motions

PBS moved for judgment notwithstanding the verdict, for a new trial, and to alter or amend the judgment. On June 28, 2024, the circuit court held a hearing on the motion. PBS produced the fruits of its post-trial investigation—specifically, testimony by Mr. Oakley's supervisor at ARS, Mr. Richcreek, and the doctor's note from Dr. Griffith that Mr. Oakley had submitted prior to his resignation—to prove that it was denied the opportunity to properly put forward evidence at the jury trial.

The circuit court found that PBS had not been prejudiced by its inability to produce evidence it identified and denied its motions. PBS then noted this timely appeal.

DISCUSSION

I. Maryland Workers' Compensation Law, Generally

Under Maryland's Labor and Employment Code, a "covered employee" may be entitled to compensation for an "accidental personal injury" that "arises out of and in the course of employment[.]" Md. Code Ann. Lab. & Empl. ("LE") §§ 9-501, 9-101(b). That compensation may come in the form of medical benefits (payment of expenses for medical treatment or care), disability benefits (compensation for lost wages or earning capacity), death benefits (compensation to dependents for loss of financial support), or vocational rehabilitation (job training). 1 Richard P. Gilbert, Robert L. Humphries, Jr., Jeffrey C. Herwig, & Lance G. Montour, *Maryland Workers' Compensation Handbook*, § 9.01[1]-[5] (4th ed. 2013). The instant case deals with disability benefits.

Most disability claims fall into one of four categories: temporary partial disability, temporary total disability, permanent partial disability, and permanent total disability. *Wal Mart Stores, Inc. v. Holmes*, 416 Md. 346, 353 n.2 (2010). These categories, broadly reflecting the duration and scope of the injury, rest on legally distinct theories of compensation for the covered employee. *Id.*

Awards for permanent total disability, and for permanent partial disability, are governed by separate parts of the Workers' Compensation Act. *Hollingsworth v. Severstal Sparrows Point, LLC*, 448 Md. 648, 656–657 (2016). Among other differences, a permanently totally disabled employee will be paid a share of their prior income "for the period that the covered employee is permanently totally disabled[,]" LE § 9-637(b), including, for claims arising from events after January 1, 1988, annual cost-of-living adjustments. LE § 9-638. By contrast, and as above, compensation for permanent partial disability is measured by reference to weeks. LE § 9-627(a)–(j) (pertaining to "scheduled" body parts) and LE § 9-627(k) (pertaining to "unscheduled" body parts).

Regarding permanent partial disability benefits, where the disability is due in part to an "accidental personal injury" and in part to a "preexisting disease or infirmity," the Commission shall determine what proportion of the disability is attributable to the former and what proportion to the latter. LE § 9-656. A covered employee is not entitled to compensation for the portion of his or her permanent disability that is reasonably attributable to a pre-existing condition. *Id.* Section 9-656(b) provides:

> (b) The covered employee:
>
> (1) is entitled to compensation for the portion of the disability of the covered employee that is reasonably attributable solely to the accidental personal injury or occupational disease; and
>
> (2) is not entitled to compensation for the portion of the disability that is reasonably attributable to the preexisting disease or infirmity.

LE § 9-656(b). In other words, "liability for a permanent disability is to be apportioned among all of the injuries that caused the permanent disability[.]" *Elec. Gen. Corp. v. Labonte,* 454 Md. 113, 121 (2017).

With these concepts in mind, we turn to PBS's questions.

II. The Circuit Court Did Not Exceed Its Subject Matter Jurisdiction In Considering Mr. Oakley's Claim.

A. The Parties' Contentions.

PBS contends that Mr. Oakley's claim was, in essence, and as Mr. Oakley presented it to the jury, a *de facto* claim for total permanent disability. PBS points to Mr. Oakley's arguments that he was disabled from doing most of the work for which he was qualified as well as Mr. Oakley's argument about the extent of his wage loss. PBS contends that because Mr. Oakley's claim was a *de facto* permanent total disability claim, he was required to present it to the Commission before he presented it to the circuit court. Because Mr. Oakley failed to do so, the circuit court was without jurisdiction to hear Mr. Oakley's claim. PBS asks us to vacate the jury's verdict and remand Mr. Oakley's claim to the Commission so that it may adjudicate Mr. Oakley's claim in the first instance.

Mr. Oakley disagrees. He contends that he did not raise a total permanent disability claim before the Commission or the circuit court. He argues that the evidence

that he presented about his loss of wages was relevant to his claim of permanent partial disability. Below, he did not argue "that he cannot work or that all of his wage-earning capacity ha[d] been taken away so as to make him permanently totally disabled." As a consequence, his claim was properly before the circuit court.

B. The Circuit Court Was Authorized to Consider Mr. Oakley's Evidence of Wage Loss and Industrial Loss of Use

We agree with Mr. Oakley. To be sure, when the circuit court hears appeals from the Commission, the circuit court is "jurisdictionally limited" to the issues that were first raised before the Commission. *Altman v. Safeway Stores, Inc.*, 52 Md. App. 564, 566 (1982), *aff'd*, 296 Md. 486, 566 (1983) ("Generally, a circuit court, upon an appeal from the Workmen's Compensation Commission, is jurisdictionally limited to a review of the issues raised and decided by the Commission explicitly or implicitly[.]"). Here, there is no dispute that Mr. Oakley did not raise a permanent total disability claim before the Commission. Nor did the Commission decide such a claim. Instead, Mr. Oakley claimed, and was found to have, a permanent partial disability. Because Mr. Oakley did not raise permanent total disability before the Commission, he could not have made such a claim before the circuit court.

Given this jurisdictional limit, Mr. Oakley's testimony about his wage loss and his asserted inability to perform most of the work for which he was qualified could not have somehow converted his permanent partial disability claim into a permanent total disability claim. As above, permanent partial disability claims are fundamentally different from permanent total disability claims. *Hollingsworth*, 448 Md. at 659–60 (rejecting the

argument that "a determination of permanent total disability is equivalent to permanent partial disability equal to 100%").

In *Hollingsworth,* the survivor of a covered employee sought to collect his benefits, arguing that because the Commission had found only 65% of his 100% permanent total disability to be attributable to the accidental workplace injury, he was actually only permanently partially disabled. *Id*. at 656–57. This would have exempted her from the cap on recovery for survivors of permanently totally disabled employees. *Id.* at 652–53. The Commission found that the cap applied, as did the circuit court on appeal. *Id.* at 653. Our Supreme Court affirmed the circuit court's determination:

> In arguing that a determination of permanent total disability is equivalent to a permanent partial disability equal to 100%, Appellant blurs the difference between a finding of permanent partial disability and a determination of permanent total disability. Yet the Workers' Compensation Commission has long recognized that the General Assembly designed a separate statutory scheme for permanent total disability claims. Pursuant to the hearing procedures that the Workers' Compensation Commission has adopted in the Code of Maryland Regulations ("COMAR"), a claimant must specifically plead permanent total disability. The regulations further stipulate that a claimant alleging permanent disability shall file with the Commission an Issues Form that: (1) explicitly claims permanent partial or permanent total disability.

Id. at 659–60 (cleaned up) (citing COMAR §§ 14.09.09.02A, 14.09.03.02D(3)).[18] Again, there is no dispute here that Mr. Oakley did not claim permanent total disability below.

[18] COMAR 14.09.09.02A provides:

> A. A claimant alleging permanent disability shall file with the Commission an issues form that:
>
> (1) Explicitly claims permanent partial or permanent total disability;

Nor should the above jurisdictional limitation be confused with evidentiary relevance. That Mr. Oakley could not have pursued a total permanent disability claim in the circuit court did not bar him from introducing evidence before the circuit court that was relevant to the claim that he did bring before the Commission, i.e., permanent partial disability as a result of the accidental personal injury to his shoulders. *Maldonado v. Am. Airlines*, 405 Md. 467, 478 (2008) ("[A] party challenging the [Commission's] decision can overcome the presumption of correctness . . . 'by submitting new evidence, by relying on all or a part of the record before the Commission, by argument as to the probative value of the evidence and by argument as to the credibility of witnesses.'").

Because Mr. Oakley's "accidental personal injury" was to an "unscheduled" part of his body, the Commission (or the circuit court) was required to "determine the percentage by which the industrial use of the covered employee's body was impaired as a result of the accidental personal injury[.]" LE § 9-627(k). Thus, the Commission had to

(2) Identifies the body parts at issue; and
(3) Identifies any alleged psychiatric disability.

COMAR 14.09.03.02D(3) provides:

> D. On the issues form, the party shall state with clarity issues to be determined and shall, if relevant:
> (1) Include the inclusive dates of any temporary total disability;
> (2) For permanent disability, identify each part of the body affected, and any alleged psychiatric disability;
> (3) Specifically plead permanent total disability;
> (4) Include the specific medical treatment sought; and
> (5) For any medical expenses, attach a list identifying each amount owed and to whom the amount is owed.

"evaluate industrial loss of use of the whole body, not just loss of an isolated body part." *Getson v. WM Bancorp*, 346 Md. 48, 60 (1997).

To make this determination, the Commission (or the circuit court) had to consider, but was not confined to considering, enumerated "factors." LE § 9-627(k). "[T]he Commission *shall consider factors including*: (i) the nature of the physical disability; and (ii) the age, experience, occupation, and training of the disabled covered employee when the accidental personal injury or occupational disease occurred." *Id.* (emphasis added).

Here, Mr. Oakley's testimony that he had lost his wages (albeit as a consequence of his resignation), that he had applied for social security benefits, and that he was disabled from doing most of the work he was qualified to do was relevant to his permanent partial disability claim. *Maldonado*, 405 Md. at 483 (claimant's testimony that "no job is going to hire me" found relevant to permanent partial disability claim); *see also Hall v. Willard Sand and Gravel Co*., 60 Md. App. 260, 267 (1984) ("There is also no question that a determination of an employee's industrial loss for an 'other cases' injury, as defined by [statutory precursor to Section 9-627(k)], is essentially a determination of loss of wage-earner capacity."). In other words, Mr. Oakley's evidence of wage loss and his asserted inability to find work had some tendency to make Mr. Oakley's permanent partial disability "more probable or less probable than it would be without the evidence." Md. Rule 5-401.

Accordingly, we find that the circuit court did not exceed its subject matter jurisdiction in allowing the jury to consider Mr. Oakley's claim.

III. The Circuit Court Erred by Denying PBS's Motion to Continue.

A. The Parties' Arguments

PBS contends that the circuit court erred by failing to grant its motion to continue. In its estimation, Mr. Oakley's belated disclosure of his resignation from ARS and his concealment of treatment for an ongoing back condition constituted prejudicial discovery violations for which PBS was entitled to a remedy.

Mr. Oakley counters that he did not violate his discovery obligations because the specific interrogatory that PBS focuses on did not call for supplementation. He adds that, to the extent that "there was a failure of discovery," the court did not err in exercising its discretion by denying a sanction in the form of a continuance because there was no prejudice to PBS.

We conclude that the circuit court erred by failing to find that Mr. Oakley violated his discovery obligations. We further conclude that this error was not harmless to PBS. Accordingly, we reverse and remand for a new trial.

B. Legal Framework

1. Discovery Violations, In General

"The basic purpose of the discovery rules is to require a party litigant, in response to a discovery request, to disclose fully all of the facts requested by adversaries and, thereby, eliminate, as far as possible, the necessity of any party to litigation going to trial in a confused or muddled state of mind concerning the facts that gave rise to the litigation[.]" *Matter of City of Hagerstown*, 265 Md. App. 581, 630 *cert. denied sub nom. City of Hagerstown v. Johnson,* 492 Md. 402 (2025) (cleaned up).

To this end, Maryland Rule 2-421(b) requires that the responding party "answer each interrogatory separately and fully in writing under oath." Md. Rule 2-421(b). The duty to provide accurate and comprehensive information does not conclude when the interrogatories are answered. Instead, Maryland Rule 2-401(e) provides that:

> **(e) Supplementation of Responses.** Except in the case of a deposition, a party who has responded to a request or order for discovery and who obtains further material information before trial shall supplement the response promptly.

For the circuit court, deciding whether to sanction a party's failure to provide or supplement their discovery responses is a two-step process. First, the circuit court must determine if there is a "failure of discovery." *Matter of City of Hagerstown*, 265 Md. App. at 629. Then, if the circuit court finds such a failure, it "may enter such orders in regard to the failure *as are just*[.]" *Id.* (emphasis added).[19]

2. Standard of Review

"We review a trial court's finding of a discovery violation under the clearly erroneous standard." *Schneider v. Little*, 206 Md. App. 414, 432–33 (2012), *rev'd on*

[19] To determine what discovery sanction is appropriate, the trial court should analyze the "*Taliaferro* factors," so named after *Taliaferro v. State*, 295 Md. 376 (1982). They are:

> "whether the disclosure violation was technical or substantial, the timing of the ultimate disclosure, the reason, if any, for the violation, the degree of prejudice to the parties respectively offering and opposing the evidence, whether any resulting prejudice might be cured by a postponement and, if so, the overall desirability of a continuance."

Taliaferro, 295 Md. at 390–91. Here, if the circuit court found a discovery violation, it did not analyze the *Taliaferro* factors.

other grounds, 434 Md. 150, (2013). However, "[i]f the circuit court made *no specific finding as a matter of law* that [a party] violated the discovery rule, we exercise independent *de novo* review to determine whether a discovery violation occurred." *Alarcon-Ozoria v. State*, 477 Md. 75, 91 (2021) (emphasis added). To this end, we review the record in its entirety to determine whether a discovery violation occurred. *Shepard v. State*, No. 1737, Sept. Term 2024 (filed Mar. 19, 2024), 2026 WL 775292 *6.[20]

A circuit court's erroneous failure to find a discovery violation does not lead ineluctably to reversal, though. *Schneider*, 206 Md. App. at 443 (citing *Barksdale v. Wilkowsky,* 419 Md. 649, 657 (2011)) ("It has long been the policy in this state that [appellate courts] will not reverse a lower court judgment if the error is harmless."). Instead,

> [a] verdict will not be overturned unless the error was likely to have affected the verdict below; and an error that does not affect the outcome of the case is harmless error. The complaining party must demonstrate that the prejudice was likely or substantial. The general rule is that a complainant who has proven error must show more than that prejudice was possible; she must show that it was probable.

Id. at 443 (cleaned up).

But "an appellate court cannot 'unbake' the jury verdict and examine the impact of any one ingredient." *Id.* at 451 (cleaned up). Our task, therefore, is to "focus on the context and magnitude of the error." *Id.* "[I]n certain cases, the mere inability of a reviewing court to rule out prejudice, given the facts of the case, may be enough to

[20] We may cite an unreported case for persuasive value pursuant to Maryland Rule 1-104(a)(2)(b) where it was issued on or after July 1, 2023.

declare an error reversible." *Id.* at 451–52. Therefore, in determining whether a party has, or has not, been harmed by the circuit court's erroneous conclusion that there was, or was not, a discovery violation, we "engage in a comprehensive review of the record, and base [our] determination on the nature of the error and its relation to the case." *Id.* (cleaned up).

In *Schneider*, we reviewed the jury trial record that was compiled after the circuit court erroneously found a discovery violation on the part of one defendant. *Schneider* was a medical malpractice case in which Ms. Little claimed that she was injured as a result of her vascular surgeons' attempt to use a mis-sized graft during Ms. Little's aortobifemoral bypass surgery. *Id.* at 423–25. The circuit court erroneously concluded that one of the surgeons had violated his discovery obligation by failing to produce a CAT scan showing the size of Ms. Little's aorta, and excluded the scan. *Id.* at 435. After reviewing the expert testimony and Ms. Little's closing argument and concluding that "the CAT could have conclusively established the size of [Ms. Little's] aorta," we determined that exclusion of the CAT scan constituted reversible error. *Id.* at 443–44.

C. The Circuit Court Made No Specific Finding as a Matter of Law that Mr. Oakley Violated Discovery Rules

In the instant case, the circuit court made no specific finding as a matter of law that Mr. Oakley violated discovery rules.

PBS twice notified the circuit court of Mr. Oakley's failure to disclose his resignation from ARS in response to Interrogatory No. 7 until eight days before trial (one hundred and nine days after his resignation) and outlined the prejudice it would suffer if

that information were provided to the jury. Nonetheless, the circuit court did not explicitly find, one way or the other, whether Mr. Oakley's belated disclosure was a discovery violation. Instead, the circuit court labeled Mr. Oakley's resignation merely as "something [that] changes," and stated that additional changes could occur "five more times" before the next trial date:[21]

> [COURT]: . . . I agree with [Mr. Oakley's counsel] on this point which is that the Court, I don't believe, should continue the case every single time something changes. It could change again five more times before we got to the next trial date. And if the Court grants a continuance – if the Court is going to grant a continuance, the Court needs to be doing so for a reason that the Court believes is necessary.

[21] The circuit court's ambivalence about whether there had been a discovery violation would continue post-trial. At the hearing on PBS's post-trial motions, after PBS had produced Dr. Griffith's note and Mr. Richcreek had testified, the court declined to expressly find either that a discovery violation had or had not occurred, instead highlighting its belief that there was no prejudice to PBS:

> [COURT]: The court has reviewed everything and given this a great deal of thought. The issue was raised before trial. The issue was addressed at trial. The issue is, obviously, being re-raised here after trial. And it is the court's opinion that if there was prejudice, and I don't know that I agree there was prejudice because *I do think there was sufficient notice before the trial for counsel to be able to get information***.** That was evidenced by the fact that counsel did contact the H.R. department, did receive the letter of resignation, and did 'gotcha' in the court during the course of trial.
>
> So, I don't think that there was – *it's my belief that there was not prejudice*. The court believes that the Respondent had the ability – to exercise the ability to properly confront and cross-examine Mr. Oakley with regard to his back, with regard to his reason for resigning with the differences between his deposition testimony and his testimony in court.
>
> And *the court believes that the actions of the court during the course of trial were the appropriate remedy based on all the facts and circumstances.* And for those reasons, the court is going to deny the motion for a new trial.

(Emphasis added).

Because the circuit court made no specific finding as a matter of law that Mr. Oakley violated discovery rules, we review the record *de novo* to determine whether his actions constitute discovery violations.

D. Mr. Oakley Violated Discovery Rules

Reviewing the full record *de novo*, we find that Mr. Oakley did violate his discovery obligations by failing to supplement his answer to PBS's Interrogatories No. 7 and 13.

Interrogatory No. 7 asked Mr. Oakley about his employment history, whether there was any change in his employment, the date of termination, and the reasons.

> State your employment history for the past ten (10) years, (whether full-time or part-time) including for each employer, the full names and addresses of each business, the inclusive dates of employment, the name of your supervisor, your average weekly wage, your occupation, the nature of your duties with each, and the reasons for any changes in duties or employers, the date of termination and the reason therefor.

After resigning from ARS, effective June 16, 2024, Mr. Oakley did not supplement his response to Interrogatory No. 7. That Mr. Oakley had left ARS, and why, was material information that Mr. Oakley should have disclosed to PBS in a timely supplemental response to this interrogatory.

The same can be said of PBS's Interrogatory No. 13. This interrogatory asked Mr. Oakley to identify healthcare providers beyond those who worked on his shoulder issue:

> Provide the name of your primary care physician *and whether you are presently under the care of any other physician or any other healthcare provider*, for any reason, and, if so, the name and address of same, and the date of the last visit for treatment or examination.

(Emphasis added.) Though he was under the care of Dr. Griffith for lower back pain as of April 21, 2023, Mr. Oakley did not supplement his answer to Interrogatory No. 13 to disclose this.[22]

In an attempt to overcome the conclusion that he violated his discovery obligations, Mr. Oakley argues that his resignation from ARS was not responsive to Interrogatory No. 7 because PBS "restrict[ed] [the interrogatory] to the past."[23] To be sure, a party is not required "to volunteer information beyond" what a discovery request seeks. *Storetrax.com, Inc. v. Gurland*, 168 Md. App. 50, 92 (2006), *aff'd*, 397 Md. 37 (2007). Here, however, there was nothing in the language of Interrogatory No. 7 that restricts the interrogatory to a static ten years in the past. When Mr. Oakley resigned from ARS, that resignation meant that his employment at ARS then became part of his "employment history." Mr. Oakley's termination from ARS, when it took effect, and the reason for it, was information that was responsive to Interrogatory No. 7. Disclosing this information was not a matter of volunteering it beyond what Interrogatory No. 7 asked. Disclosure was required.

By failing to supplement his response to Interrogatory Nos. 7 and 13, Mr. Oakley violated his discovery obligations.

[22] Because PBS did not know about Mr. Oakley's April 21, 2023 visit to Dr. Griffith before twice asking the circuit court for a continuance, PBS did not specify this discovery failure as a reason for why a continuance was needed.

[23] Mr. Oakley offers no argument regarding his failure to supplement his answer to Interrogatory No. 13.

E. The Circuit Court's Failure to Find Mr. Oakley's Violation of Discovery Rules was Harmful Error

Having found that the circuit court erred by failing to find Mr. Oakley's discovery violations, at least as to Interrogatory No. 7 which the court had been notified about, we must now consider whether that error was harmless. We find that it was not.

As to the harm it faced, PBS argues that "the trial court allowed Mr. Oakley to testify and offer a new issue [that is, extensive wage loss and complete industrial loss of use] and material evidence, unchecked and without allowing PBS an opportunity to prepare a defense and gather evidence to challenge or contradict his proffered evidence." As a result, "[t]he verdict is worth $297,332.00, or more than a quarter of a million more than the September 14, 2022, award of the Workers' Compensation Commission."[24] PBS adds that it was unable to secure for trial the Dr. Griffith note that attributed Mr. Oakley's need for work restrictions to his non-claim-related lower back pain. Nor was PBS able to

[24] PBS also argues that the "jury's finding of 85% impairment to the right shoulder is 41% higher than the impairment rating assigned by Mr. Oakley's expert witness, Dr. Salter." This contention is not supported by the record. When asked "[w]hat, if any permanent partial *disability* do you find is the result of [Mr. Oakley's] work injury of December 12, 2019?[,]" the jury found, as to "Whole Person Right Shoulder: 85%." (Emphasis added).

Impairment and disability are legally distinct concepts. *Maryland Workers' Compensation Handbook*, § 7.03. While both are measured in percentages, impairment measures the medical harm the employee sustained as a result of the injury and disability measures the extent to which the impairment impacts their ability to work. *Id.* Impairment is a rating made strictly by medical experts and disability lies solely within the realm of the fact-finder. *Id.* The "compensation is paid not for the injury but for the resulting disability." *Getson*, 346 Md. at 61. Although impairment may be considered in determining disability, the court should not "make a one-to-one translation of impairment to disability[.]" *Id*. at 62 (quoting AMA Guides, supra, § 1.1, 1.3, at 2, 6) (cleaned up).

compel Mr. Richcreek to appear at trial to rebut Mr. Oakley's claim that ARS was unable to accommodate the restrictions that Mr. Oakley needed.

Mr. Oakley argues that PBS was not harmed by the circuit court's handling of his failure to supplement his interrogatory answers. Specifically, Mr. Oakley contends that "[PBS] did have sufficient time to obtain information from [ARS] and were able to confront [Mr. Oakley] on the stand regarding those matters [his resignation and back condition]" and "[u]ltimately, [Mr. Richcreek's] testimony [at the post-trial motions hearing] did not change anything about the facts of the case, or the disability [Mr. Oakley] suffers as a result of the injury."

We cannot rule out that PBS was prejudiced by Mr. Oakley's failure to timely disclose his April 21, 2023 visit to Dr. Griffith, his resignation from ARS, and the reasons for his resignation. Had Mr. Oakley timely disclosed his visit to Dr. Griffith, and the reason for it, i.e., his recurring lower back pain, and that it was ARS's unwillingness to accept Dr. Griffith's note that prompted Mr. Oakley's resignation, PBS could have attempted to rebut Mr. Oakley's claims that it was his work-related shoulder injuries, and ARS's unwillingness to accommodate them, that prompted him to resign. PBS could have established that six weeks prior to Mr. Oakley's resignation, Mr. Oakley saw Dr. Griffith complaining of lower back pain, that Dr. Griffith found Mr. Oakley's pain "consistent with recurrence" of his lower back pain,[25] that Dr. Griffith restricted him

[25] Dr. Griffith reported that Mr. Oakley was a "62-year-old male patient who initially responded quite favorably to lumbar facet injections at both the right and left L5-

from further painting, and wanted him to return in six weeks. And PBS could have called Mr. Richcreek to establish that Mr. Oakley had never complained about his shoulders to ARS.

We cannot rule out that Mr. Oakley's discovery violations affected the jury's apportionment finding. Knowing that Mr. Oakley's unrelated lower back pain had recurred six weeks before he decided to resign, and that Dr. Griffith had placed work restrictions on him in order to treat his back pain, could have helped the jury in determining to what extent Mr. Oakley was disabled from his work-related shoulder injury versus his pre-existing lower back condition. Without the relevant information that Mr. Oakley withheld, or the rebuttal that it portended for PBS, the jury was left to apportion Mr. Oakley's disability exclusively to the shoulder injuries that he suffered while working for PBS. As it was, the jury found that none of Mr. Oakley's permanent partial disability resulted from his pre-existing condition.

Mr. Oakley's contention that PBS had sufficient time to obtain information from ARS and confront him on the witness stand regarding his resignation and his back condition is not persuasive. PBS learned of Mr. Oakley's resignation from ARS eight days before trial. And while PBS was able to learn that ARS had rejected (as not being on letterhead) a doctor's note that Mr. Oakley supplied, PBS did not have the note, or, apparently, know about its contents when the case went to trial. The only back-related

S1 facet articulations. Today's examination is consistent with the recurrence activity related lower back pain as a result of lumbar facet anthropathy. There is no clinical evidence of neurologic involvement."

questions PBS asked Mr. Oakley related to the medication he had taken "previously" for a bad back before the September 12, 2022 Commission hearing and whether he attributed his inability to pick up his grandchildren "to [his] shoulders or [his] previous back injury." PBS did not have the ability to, and did not, "confront" Mr. Oakley with the fact that he had seen Dr. Griffith about a recurrence of his lower back pain six weeks before Mr. Oakley resigned. Without this information, the jury had less, if any, of a basis, on which to conclude that a portion of Mr. Oakley's disability resulted from his recurring back condition.

Mr. Oakley also argues that Mr. Richcreek's testimony would not have changed anything. We disagree. In conjunction with PBS's post-trial motions, Mr. Richcreek testified that prior to Mr. Oakley's resignation from ARS, Mr. Oakley did not complain to ARS about his shoulders. From the absence of such shoulder-related complaints, the jury could have inferred that Mr. Oakley's shoulder injury was not as disabling to him as Mr. Oakley claimed. Without this information, though, the jury found that 85% of Mr. Oakley's right shoulder disability, and 5% of his left shoulder disability, resulted from his December 12, 2019 shoulder injury, and that none of his disability resulted from a pre-existing condition.

CONCLUSION

We reverse the circuit court's judgment and remand for a new trial not inconsistent with this opinion. On remand, the circuit court should afford the parties

sufficient time, before trial, to supplement their discovery responses, and, if the circuit court deems appropriate, conduct further discovery.

JUDGMENT OF THE CIRCUIT COURT FOR SAINT MARY'S COUNTY REVERSED AND REMANDED FOR A NEW TRIAL NOT INCONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.