

Circuit Court for Prince George's County
Case No.: C-16-CV-23-003398

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 1127

September Term, 2024

IN THE MATTER OF
STEWART WARREN

Berger,
Tang,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 28, 2025

*This is a per curiam opinion. Under Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

Stewart Warren, appellant, appeals from a judgment of the Circuit Court for Prince George’s County affirming a decision of the Workers’ Compensation Commission. On appeal, Warren presents six questions for our review, which we reduce and rephrase as:

1. Did the circuit court err in excluding Warren’s medical records from evidence?
2. Did the circuit court err in awarding judgment to the appellees?

For the reasons below, we affirm.

BACKGROUND

In September 2016, Warren injured his right shoulder on the job while working for Giant Food, LLC, appellee.¹ As a result, he filed a workers’ compensation claim, alleging physical and psychological injuries. A month later, Warren injured his left shoulder on the job and filed a second workers’ compensation claim, again alleging physical and psychological injuries.

Warren’s claims were heard together before the Workers’ Compensation Commission in June 2023. For his right shoulder, the Commission found that Warren suffered a 38% industrial loss of use of the body due to his on-the-job injury and awarded him 190 weeks of permanent partial disability. As for his left shoulder, the Commission found that Warren suffered a 15% industrial loss of use of the body, with 5% being reasonably attributable to his on-the-job injury and 10% being due to pre-existing conditions. The Commission awarded Warren 25 weeks of permanent partial disability for

¹ Indemnity Insurance Co. of North America, Giant’s insurer, is also an appellee. We refer to both appellees throughout this opinion collectively as “Giant.”

this injury. In both claims, the Commission found that there was no permanent partial disability to Warren’s psychological condition due to his on-the-job injuries.

Warren then appealed to the Circuit Court for Prince George’s County for a *de novo* hearing, and the court held a jury trial in July 2024. The only evidence that Warren presented was his own testimony about his injuries. He tried to introduce his medical records into evidence, but because they had not been certified by a custodian, the circuit court excluded them as hearsay. At the close of Warren’s case-in-chief, Giant moved for judgment, which the court granted. This appeal followed.

STANDARD OF REVIEW

“Ordinarily, we review a trial judge’s determination on the admission of evidence for abuse of discretion[.]” *Frobouck v. State*, 212 Md. App. 262, 282 (2013) (citation omitted). That said, the threshold determination of “whether evidence is hearsay is an issue of law reviewed *de novo*.” *Id.* (citation omitted).

Similarly, whether granting a motion for judgment was proper is a legal question that we also review *de novo*. *Ayala v. Lee*, 215 Md. App. 457, 467 (2013). In doing so, we view the evidence and all inferences reasonably drawn from it in the light most favorable to the appellant. *Id.* Granting a motion for judgment is proper only “where the evidence is not such as to generate a jury question, *i.e.*, permits but one conclusion[.]” *Id.* (cleaned up).

DISCUSSION

Hearsay is any out of court statement “offered in evidence to prove the truth of the matter asserted.” Md. Rule 5-801(c). At trial, Warren conceded that his medical records were hearsay. Absent an exception, “hearsay is not admissible.” Md. Rule 5-802. As the

circuit court observed, Warren’s medical records could not be admitted under the business-records exception because they were not certified in a Certification of Custodian of Records or Other Qualified Individual Form, *see* Md. Rule 5-902(12), and the custodian of the records was not present to testify on their authenticity, *see* Md. Rule 5-803(b)(6). Consequently, Warren’s medical records were hearsay not within an exception, and the circuit court did not err in excluding them.

Without his medical records or other expert testimony, Warren’s claim failed as a matter of law. To succeed in the circuit court, Warren had to prove that his injuries were more severe than what the Commission determined. *See* Md. Code Ann., Lab. & Empl. § 9-745(b). Although expert testimony is not always required in workers’ compensation cases, “reliance on lay testimony alone is not justified when the medical question involved is a complicated one, involving fact-finding which properly falls within the province of medical experts.” *Jewel Tea Co. v. Blamble*, 227 Md. 1, 7 (1961).

For example, expert testimony is not necessary to prove permanent disability when an employee loses a finger due to an on-the-job accident. *See, e.g., Congoleum Nairn v. Brown*, 158 Md. 285, 289 (1930). “Common knowledge would tell [a jury] that a lost member is permanently lost[.]” *Cluster v. Upton*, 165 Md. 566, 569 (1933). But when an injury is less obviously severe or permanent in nature, expert testimony “concerning the type, degree, extent[,], and duration of disability” is needed to overcome the presumption that the Commission’s decision is *prima facie* correct. *Blamble*, 227 Md. at 7; Md. Code Ann., Lab. & Empl. § 9-745(b)(1). Put simply, to submit the issue to a jury, “[t]here must

. . . be a reliable basis . . . , something beyond mere conjecture[] or possibility[,]” that an injury is severe or permanent. *Cluster*, 165 Md. at 569.

Here, Warren’s shoulder injuries were not as obviously severe or permanent as a lost finger. He offered no medical evidence or expert testimony as to the “degree, extent[, or] duration of disability[.]” *Blamble*, 227 Md. at 7. “In the absence of more compelling proof than the opinion of the employee [him]self[,]” there was insufficient evidence to warrant submitting to the jury the question of permanent disability. *Id.* at 8. The circuit court therefore did not err in granting Giant’s motion for judgment.

**JUDGMENT OF THE CIRCUIT
COURT FOR PRINCE GEORGE’S
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**