

Circuit Court for Montgomery County
Case No. C-15-CV-22-001431

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1167

September Term, 2024

MONTGOMERY COUNTY, MARYLAND

v.

PATRICIA TAYLOR

Berger,
Shaw,
Raker, Irma S.
(Senior Judge, Specially Assigned)
JJ.

Opinion by Shaw, J.

Filed: November 19, 2025

*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).

Appellee Patricia Taylor, a Montgomery County volunteer EMT, appealed the denial of her claim for temporary total disability benefits by the Maryland Workers' Compensation Commission to the Circuit Court for Montgomery County. Appellee elected a jury trial, and following the presentation of evidence and deliberations, the jury determined that she was temporarily totally disabled on the dates specified in her claim. Appellant Montgomery County, Maryland filed a motion for J.N.O.V., pursuant to Maryland Rule 2-532(e), requesting the court set aside the jury's verdict. The court denied Appellant's motion, and Appellant timely noted this appeal. Appellant presents one question for our review:

1. Did the trial court err in denying the County's J.N.O.V. and so finding that the Appellee was temporarily totally disabled during the forty-seven dates claimed when the Appellee did not submit legally sufficient evidence that she was temporarily totally disabled?

For the following reasons, we hold the circuit court did not err and we affirm the judgment.

BACKGROUND

On August 15, 2016, Appellee Patricia Taylor, a Montgomery County EMT, sustained a head injury after she was struck by a heavy backboard during a training exercise. Appellee filed a temporary disability claim with the Maryland Workers' Compensation Commission specifying forty-seven dates between 2017-2021. On February 28, 2022, following a hearing, the Maryland Workers' Compensation Commission denied Appellee's claim. She then filed a *de novo* appeal to the Circuit Court for Montgomery County and the matter proceeded to a jury trial on March 5, 2024.

Appellee presented two witnesses, Dr. Jeffrey Gaber, a board-certified internal medicine doctor, who testified by video deposition and herself. Dr. Gaber opined that, based on his training, experience, medical evaluation, and review of Appellee’s medical records, Appellee sustained a concussion as a result of a work injury on August 15, 2016. Dr. Gaber further opined that Appellee suffers from post-concussive syndrome because of the accident and that she was unable to work on days when the symptoms were severe:

Dr. Gaber: . . . And a concussion can cause a whole host of symptoms. . .

[Plaintiff’s Counsel]: And were any of these symptoms that you report, either in a review of medical records, or in your history from her, symptoms that Taylor experienced?

Dr. Gaber: She had—she had several of these, but her most prominent issue was the headache problem.

[Plaintiff’s Counsel]: And can a trauma such as that happened to Ms. Taylor in August or Fall of 2016, cause post-concussive headaches?

Dr. Gaber: Absolutely. Yes.

Dr. Gaber explained the significance of EMT Taylor’s post concussive headaches and their impact on her ability to serve as a paramedic and as a full-time teacher in the education and training department at Johns Hopkins University. He stated:

We all get headaches now and then. You know, but if you’re having a really bad headache or a migraine quality headache, for many patients, it is very hard to work in any capacity. And as a paramedic, particularly so, because they are exposed to bright lights, loud noises the sirens, all the excitement, and so forth things that they have to do day to day, let alone heavy lifting, doing CPR, taking care of patients that can be critically ill. Doing that in the midst of having a legit migraine headache, I think would be remarkable frankly. And in terms of being a teacher, although it’s obviously less taxing than that of paramedic, still, if you’re a teacher, and you were in the midst of a terrible

migraine, it is very hard to concentrate. It would be difficult to maintain those duties during a migraine attack.

Dr. Gaber testified that he reviewed notes and records from three other doctors who assessed Appellee, and he relied, in part, on those materials, and agreed that Appellee “clearly has a post-concussive symptom complex.” They were Dr. Paul Dash, Appellee’s treating physician; Dr. Alexis Sandoval, Appellee’s treating neurologist; and Dr. Zeyad Morcos, a neurologist who performed an independent medical examination. Dr. Gaber stated that Dr. Dash’s March 19, 2019 entry documented severe symptoms as a result of her traumatic brain injury; namely, headaches, tingling in her fingers, her memory not being as sharp, as well as some dizziness. Dr. Gaber stated that he also reviewed a letter written by Dr. Sandoval, that documented the dates that she was unable to work. He stated:

It’s a to whom it may concern letter. This is to inform you that Ms. Taylor has reported to me that she was unable to work on the following days due to a migraine headache. And then there’s a list of a host of dates that she was unable to work in 2017, 2018, 2019, 2020. And it concludes, Ms. Taylor is being seen in our clinic for chronic migraine headaches. Thank you for your attention. That’s it.

Dr. Gaber testified that Dr. Zeyad Morcos concluded that Appellee suffered several complications following her concussion that resulted in lingering and worsening concussion symptoms or post-concussive syndrome. According to Dr. Gaber, Appellee “is one of those unfortunate small percentage of people who, after a concussion, has long-standing and, in her case, permanent problems from it . . . and that there are people who get hit in the head and have to live through what she’s lived through. She clearly has a post concussive symptom complex.”

When asked whether he had “an opinion within a reasonable degree of medical probability, as to whether Ms. Taylor could properly perform her duties on the days that her symptoms were that severe,” Dr. Gaber stated:

Dr. Gaber: . . . Yes, I have an opinion. And yes, I believe that on those dates that EMT Taylor had a headache disorder severe enough that would have made it impossible for her to work in either of her careers as a teacher or paramedic.

[Plaintiff’s Counsel]: And why do you hold that opinion?

Dr. Gaber: Well, first of all, to a reasonable degree of medical certainty, and I hold the opinion because it’s consistent with the entire story that we’ve – that has presented, the review of her medical records, what she had told me when I saw her years ago, what she told neurologist just recently, Dr. Morcos, all very consistent, and that her headaches are at times severe enough that she . . . can’t work.

During cross-examination, Dr. Gaber reiterated that Appellee’s inability to work on the specific dates mentioned was due to her post-concussive symptoms of migraine headaches. He also stated that she had other symptoms, including that she had trouble concentrating and had visual symptoms. Dr. Gaber was asked by Appellant’s counsel, whether Appellee had reached maximum medical improvement at the time of his evaluation.

[Employer’s Counsel]: And did you find that as of the date, when you saw here in your office, January 25th, 2018, that she had reached maximum medical improvement; Is that correct?

Dr. Gaber: You’re saying on the first visit that I saw her?

[Employer’s Counsel]: Yes

Dr. Gaber: No, I don’t think I . . .

[Employer’s Counsel]: Well, you, provided a—you mentioned that you had provided an opinion regarding her permanent impairment, correct?

Dr. Gaber: Yeah. I understand. But I did not make the statement that you’re saying. I know what you’re talking about. You and I know. But I did not say that. I said I gave some permanency rating numbers and so forth. And then I said the prognosis is guarded. So that’s actually different than saying a person is at maximum medical improvement, which typically implies that they’re done; they don’t need treatment anymore. I did not say that.

Dr. Gaber further described Appellee’s treatment as unstable, testifying:

[I]t was not stable. She not on just, as an example, one or two meds, and just keep refilling the same thing, and pat on the back. You’re doing fine. Perfect. Not at all. She was on I didn’t count them, but I mean, she was you know, roughly, ten, twelve different kinds of medications. Some of them prevention for headache. Some of them for the acute treatment of the headache. Some of them for devices you put on your forehead, believe it or not, to stimulate the trigeminal nerve for headache. Some of them are injections; we talked about Botox. And during the course of time, all these different things were tried here and there, and adjusted. So it’s never really been the same old thing month after month.

Appellee was called as a witness and she testified that the migraines had a huge impact on her ability to perform at work. She stated, “Severe migraines would occur without any rhyme or reason and when I get a migraine, I wake up [.]. And If I can’t even look at my phone, I have a migraine because I can’t even look at the screen on my phone long enough to text my boss to let them know I’m out.” She described dizziness, memory issues, and difficulty maintaining focus and retaining new information—something she had never experienced.

Appellee discussed the various treatments, prescribed by neurologists, that she underwent between 2017-2021. She stated, “Some worked, and some didn’t . . . and was just trying whatever just to get the best result just so she could continue to work and

function.” She also testified that because there were days when she was unable to work due to her post-concussive migraines, she filed a claim for temporary disability with the Workers’ Compensation Commission for those specific dates.

[EMT Taylor’s Counsel]: . . . Do you remember the dates that you claimed for temporary total disability between 2017-2021 when you were at the workers’ Compensation?

EMT Taylor: It’s whatever—on the paper that I had given.

Following the close of Appellee’s case in chief, Appellant moved for judgment. The court denied the motion and Appellant elected not to present any evidence. The jury, later, returned a verdict, finding that Appellee was temporarily totally disabled on the dates specified in her claim. Appellant renewed its motion for judgment, which was denied by the court. Appellant then filed a motion for judgment notwithstanding the verdict, which was also denied by the court. Appellant noted this timely appeal.

DISCUSSION

Maryland Rule 2-532 provides, “a party may move for judgment notwithstanding the verdict only if that party made a motion for judgment at the close of all the evidence and only on the grounds advanced in support of the earlier motion.” On appeal, “[t]he denial of a judgment n.o.v. will be upheld when, after resolving all conflicts in favor of the [nonmoving party], and assuming the truth of all evidence and permissible deducible inferences therefrom, the evidence tends to support the plaintiff’s right to recover.” *Kleban v. Eghari-Sabet*, 174 Md. App. 60, 85 (2007). “If there exists any legally [sufficient] evidence, however slight, from which a jury could have found as they did, a [judgment

notwithstanding the verdict] would be improper. *Johnson and Higgins of Pennsylvania, Inc. v. Hale Shipping Corp.*, 121 Md. App. 426, 450 (1998) (quoting *Huppmann v. Tighe*, 100 Md. App. 655, 642 (1994)). Overcoming a motion for judgment notwithstanding the verdict requires more than a mere scintilla of evidence, . . . more than surmise, possibility, or conjecture[.]” *Smith v. Howard Cnty.*, 177 Md. App. 327, 332 (2007).

Pursuant to Lab. & Empl. section 9-101(b), a “claimant in a workers’ compensation case must [establish that] ‘a personal injury [arose] out of and in the course of employment’ and that there was a “causal relation between the accident and resulting injury.” *Wilson v. Shady Grove Adventist Hosp.*, 191 Md. App. 569, 577 (2010). The Maryland Supreme Court has defined temporary total disability as “the healing period or time during which the [employee] is wholly disabled and unable by reason of injury to work.” *Bowen v. Smith*, 342 Md. 449, 456 (1999). The Court has stated that a worker need not be completely helpless to be deemed totally disabled, but rather be incapable to perform their work duties during the healing period of their work-related injury. *Babcock and Wilcox, Inc. v. Steiner*, 258 Md. 468, 473 (1970).

A claimant is precluded from receiving temporary total disability payments if they have reached maximum medical improvement. *Phounglan Ngo v. CVS, Inc.*, 214 Md. App. 406, 409 (2013). Maximum medical improvement is defined as “the stage at which workers’ compensation claimants have reached a point of stability in their disease and they have benefited maximally from their interventional medical care.” *Sears, Roebuck & Co.*,

Inc. et al. v. Ralph, 340 Md. 304, 309 (1995) (quoting *Alexander v. Montgomery Cnty.*, 87 Md. App. 275, 279 (1991)).

Appellant argues that the circuit court erred in denying its motion for judgment notwithstanding the verdict because no legally sufficient evidence was presented to support the jury’s verdict. Specifically, Appellant contends that Appellee did not provide evidence of the specific days missed from work due to the injury, Appellee did not establish that she was temporarily totally disabled, and Appellee did not establish that the injury was causally related to her absence from work.

Appellee argues that the court properly denied Appellant’s motion for judgment notwithstanding the verdict. Appellee asserts that the jury drew a reasonable inference from the evidence presented that Appellee missed forty-seven days of work due to the accidental injury. Appellee contends that her testimony, in conjunction with Dr. Gaber’s testimony, established that she was temporarily totally disabled, unable to carry out her duties at work, her absence was causally related to her accidental injury, and Appellee had not reached maximum medical improvement.

Appellant relies on *Gales v. Sunoco*, 440 Md. 358 (2014), in support of its argument that Appellee did not establish the specific days delineated in her claim. Appellant argues that “the decision of the commission is merely evidence of what the Commission found. It is not evidence of what is actually in the Commission’s order.” In *Gales*, the Maryland Supreme Court considered whether a jury could, without the decision of the Workers’ Compensation Commission being admitted into evidence, apply the presumption of prima

facie correctness required by Lab. & Empl. section 9-745(b). *Gales*, 440 Md. at 368. There, the circuit court granted a motion for judgment, finding that the employer had “failed to meet its burden to invoke the jurisdiction of the circuit court because it had failed to move the Commission decision into evidence.” *Id.* at 358. This Court reversed the judgment of the circuit court, holding that the employer was not required to move the award into evidence. *Id.* at 363. The Maryland Supreme Court granted certiorari and affirmed our decision. *Id.* at 371. The Court noted that a de novo workers’ compensation jury trial is a “different species”, *id.* at 370, and explained that the burden of proof in a workers’ compensation trial “means simply that [the appellant] must demonstrate to the fact-finder that the Commission erred.” *Id.* at 369. Quoting Richard P. Gilbert et al., *Maryland Workers’ Compensation* § 16.07, at 14 (4th ed. 2013), the Court stated:

An appellant may submit new evidence, rely in whole or in part on the record made before the Commission, show by argument that the Commission misconstrued the facts, attached improper weight to a particular witness, misjudged the credibility of a witness or all of the witnesses, or the appellant may rely on any combination of the foregoing reasons.

Id. at 378 (citing *Abell v. Albert F. Goetze, Inc.*, 245 Md. 433 (1967) and *Morris v. Christopher*, 255 Md. 372 (1969)).

The Court further reiterated its *Holman* decision, stating that the statute:

requires a trial judge to give an instruction encompassing the Commission decision and explaining that it is prima facie correct. A trial judge can give this instruction when the Commission decision is not in evidence because the instruction informs the jury about the unique procedure applicable to the de novo workers’ compensation jury trial. Even when the Commission decision is not in evidence, the instruction we prescribed in *Holman* permits the jury to apply the presumption of prima facie correctness to the decision and

determine whether the appellant has met his burden of proving the Commission erred.

Id. at 371.

In the case at bar, we observe that the commission’s order clearly provided the dates Appellee claimed she was unable to work on. We also observe that the jury was properly instructed that the order was the final determination of the Commission and that it was prima facie correct. The jury was instructed that: “the claimant has the burden of proving by a preponderance of evidence, that the decision is wrong, and that the claimant may rely on the same, less, or more evidence than was presented to the commission.”

In addition to the Commission’s order that listed the dates of her claim, Appellee testified, as did Dr. Gaber, that the dates in her claim were the dates when she was unable to work. We hold, therefore, that Appellant’s argument that Appellee did not establish the specific dates in her claim is without merit. The instructions given to the jury “permitted the jurors to evaluate whether appellee had met her burden” in establishing that the Commission erred. Based on the instructions given, the jury could rely upon the dates listed in the commission’s order and no further evidence was required to establish the parameters of the claim.

Appellant also argues that Appellee did not establish that she was temporarily totally disabled. Appellant relies on the holding in *Buckler v. Willet Const. Co.*, 345 Md. 350 (1997). There, the Maryland Supreme Court examined whether a claimant was entitled to temporary total disability benefits, where the injury he suffered was a result of an accidental injury that occurred while he was working for one employer. The injury rendered him

unable to perform that job, but did not affect his ability to work his second job. *Buckler*, 345 Md. at 352. The Court explained that “total disability is synonymous with the inability to work [and that] the ability to work at a job for which a reasonably stable market exists precluded any finding of total disability under the Act.” *Id.* at 358-59. Thus, the Court held the claimant was “ineligible for temporary total disability benefits because he was able to work while recovering from the injuries sustained at Willett Construction.” *Id.* at 359. The court referenced the fact that “during the time the claimant was unable to work at Willet Construction due to the injury to his hand, he continued to do work for which a reasonable market exists.” *Id.* at 359. The judgment of the circuit court was affirmed. *Id.* at 361.

In the present case, Appellee maintained two jobs, one as an EMT and the other, as a professor. During the course of her testimony, she stated that on the dates specified in her claim, her post-concussive headaches were so severe that she was not able to carry out her duties as a paramedic or as a professor. Dr. Gaber also testified that Appellee was unable to work on the dates when her headaches were severe. We note that there was no claim that she worked as either an EMT or as a professor on the dates specified in her claim.

Appellant’s argument that Appellee was ineligible for temporary total disability benefits because she returned to her employment is also without merit. In *Mayor & City Council of Balt. v. Schwing*, 116 Md. App. 404 (1997), our Court held that the Act “contemplates benefits to covered employees who are temporarily incapacitated and who

then return to work in their former capacity.” *Mayor & City Council of Balt.*, 116 Md. App. at 420. In that case, a claimant who developed an occupational disease during her employment sought temporary total disability benefits, after the claimant returned to work. *Id.* at 409. Our court concluded that the claimant was temporarily totally disabled and we explained that the fact that a “claimant returns to former duties, with no reduction in capability, is of no consequence.” *Id.* at 420 (citing *Helinski v. C & P Telephone Co.*, 108 Md. App. 461, 470 (1996)). “[A] covered employee may . . . progress from [temporary total incapacitation] to full health.” *Id.*

This Court examined the standard for proving causation in workers’ compensation cases in *Wilson v. Shady Grove Adventist Hosp.*, 191 Md. App. 569 (2010). There, the appellant, a psychiatric technician injured his right knee while restraining a patient. *Wilson*, 191 Md. App. at 571. The appellant underwent two surgeries on his right knee and was required to wear a leg brace, which he claimed caused him to favor his left leg and subsequently produced pain in his left knee due to overuse. *Id.* The Workers’ Compensation Commission authorized an MRI of the Appellant’s left knee, and the employer appealed that decision to the circuit court. *Id.* at 572. The jury returned a verdict in favor of the appellee. *Id.* at 570. On appeal, the appellant argued that the circuit court erred in instructing the jury on the law of causation. The appellant argued that the instruction used narrower language than is required in workers’ compensation cases, and the appellant took issue with the trial court’s substitution of the phrase “a cause” for “could

have caused.” *Id.* at 576. This Court agreed, referring to Judge Gilbert and Judge Humphrey’s explanation in the Maryland Workers’ Compensation handbook:

[I]f a probable relationship between the accident and injury is shown, and no other intervening cause is likely to have precipitated the disability, the claimant has proven sufficient causal relationship and eligibility for benefits which are appropriate to compensate for the resultant disability.

R.P. Gilbert and R.L. Humphrey, Maryland Workers’ Compensation Handbook, section 7.02 (3d ed. 2007).

In the present case, Dr. Gaber testified that based on his own evaluation and in part, on a review of medical records from Appellee’s internal neurologist and the county’s independent medical examiner, that the accident that Appellee suffered can “absolutely” cause the “severe” post-concussive headaches that Appellee experienced. Dr. Gaber also explained that severe post-concussive headaches could make it very hard for Appellee to work in any capacity, particularly as a paramedic, where she is “exposed to bright lights, loud noises, sirens, and . . . a ton of heavy lifting.” Dr. Gaber noted that, upon review of Appellee’s records, there was no reference to any other concussion prior to 2016.

Appellee explained, during her testimony, that a terrible migraine would also make it “very hard to concentrate” while performing her teaching duties and that it “would be difficult to maintain those duties during a migraine attack.” Based on the entirety of the record, we hold that Appellee presented sufficient evidence that there was a “probable relationship” between her injury and the post-concussive symptoms that caused her to miss work on the 47 dates listed in her claim and there was no intervening cause.

As to Appellant’s argument that Appellee had reached maximum medical improvement, *Phounglan Ngo v. CVS, Inc.*, 214 Md. App. 406 (2013) is instructive. There, our Court examined whether a claimant was eligible for temporary total disability payments after the claimant had reached maximum medical improvement. 214 Md. App. at 409. We held that the circuit court properly determined that a claimant cannot receive temporary total disability payments after “he or she has reached maximum medical improvement, and the healing period has ended.” *Id.* at 418. We reiterated that “maximum medical improvement is the stage at which workers’ compensation claimants have reached a point of stability in their disease and they have benefitted maximally from interventional medical care.” *Id.* at 419 (citing *Victor v. Proctor and Gamble Manufacturing Co*, 318 Md. 624 (1990)). We affirmed the judgment of the circuit court. *Id.* at 426.

Appellant relies on *Phuonglan Ngo* to argue that Appellee had reached maximum medical improvement because Dr. Gaber testified that Appellee’s symptoms “relating to the headaches were permanent.” However, Appellee misconstrues Dr. Gaber’s testimony. He explained that Appellee’s total disability was not permanent because her “treatment was unstable, constantly changing and that she had not yet achieved maximum medical improvement.” We note that there was no other evidence presented to the contrary. As such, we conclude that the jury could properly find that Appellee had not yet reached maximum medical improvement and find that she was entitled to temporary total disability benefits as delineated in the Commission’s order.

**JUDGMENT OF THE CIRCUIT COURT FOR
MONTGOMERY COUNTY AFFIRMED; COSTS
TO BE PAID BY APPELLANT.**