Circuit Court for Baltimore County
Case No. 03-C-17-004419

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2249

September Term, 2018

BALTIMORE COUNTY

v.

DENNIS J. O'NEILL, JR.

Beachley,
Wells,
Adkins, Sally D.
(Senior Judge, Specially Assigned)
JJ.

Opinion by Wells, J.

Filed: May 5, 2020

Appellant, Baltimore County, moved for summary judgment in the Circuit Court for Baltimore County to vacate a supplemental workers' compensation award to Appellee, Dennis J. O'Neill, Jr., on grounds that it was barred by the statute of limitations. After a hearing on the issue, the circuit court affirmed the Commission's decision that the award was not barred by limitations, since O'Neill's initial petition to modify his award was timely and did not prejudice Baltimore County, despite O'Neill's use of the wrong claim number. The County filed a timely appeal and poses one question which we have rephrased:

> Can the Maryland Workers' Compensation Commission grant a Motion for Modification of an Award when the Motion is filed within the five-year Statute of Limitations, but contains an erroneous claim number and is not filed in the proper form?[1]

We answer yes and affirm the circuit court's ruling.

FACTUAL AND PROCEDURAL BACKGROUND

Dennis J. O'Neill, Jr. was employed by Baltimore County ("the County") as a police officer from 1974 to 2011. On April 21, 2009, O'Neill was in a work-related car accident and suffered neck and back injuries. Between May and July 2009, O'Neill filed two claims with the Workers' Compensation Commission ("Commission") for the same injury caused

[1] Appellant's original question asked: "Whether the Maryland Workers' Compensation Commission can grant a Motion for Modification of an Award when the Motion is not filed within the five-year Statute of Limitations and the Motion that is filed is not in proper form?"

by the April 21, 2009 accident. The first was docketed as B719005 and the second as B719903. At O'Neill's request, the Commission dismissed claim B719903 as a duplicate of B719005 (which remained open) on July 24, 2009.

A hearing was held before the Commission on May 23, 2011, but was listed as occurring in the dismissed claim, B719903. The error apparently went unnoticed and on June 9, 2011, the Commission issued an award of permanent partial disability to O'Neill in claim B179903. The County issued a check to O'Neill for $19,508.39, and it was processed in his account on June 24, 2011. On July 12, 2011, O'Neill advised the Commission that its order was in the wrong claim number. In response, on August 19, 2011, the Commission rescinded its prior order in claim B719903, and issued the same order in claim B719005. The Commission's findings were otherwise not disturbed, and the funds deposited in O'Neill's account on June 24, 2011 were not refunded or otherwise challenged.

On May 17, 2016, O'Neill sought to re-open his claim by submitting to the Commission an Issues form and a medical evaluation by Dr. Joshua Macht, documenting worsening of his disabling conditions. As it happens, O'Neill supplied the dismissed claim number, B719903, on the Issues form. The County was notified on June 2, 2016 of the hearing scheduled for August 9, 2016 on O'Neill's Issues. On July 21, 2016 the County requested a continuance in claim B719903 which the Commission granted. A month later, the County had O'Neill rated by Dr. Stephen R. Matz in preparation for the hearing.

On the morning of the hearing, November 7, 2016, the County asserted that O'Neill's Issues had been filed under the wrong claim number. The record indicates little

more than that the hearing was then cancelled. The County notes that O'Neill, apparently, withdrew his Issues and the record does not reflect that the Issues were ever revived.

On January 6, 2017 O'Neill submitted another Issues form, this time with the correct claim number: B719005. The County responded on January 30, 2017, asserting that modification of the award was now barred by the five-year statute of limitations. On March 13, 2017, O'Neill attempted to correct the claim number on the Issues filed May 17, 2016 by submitting both an Issues form and a "Request for Document Correction" form, stating "erroneous claim number on issues filed 3/17/16 (sic)[2] in case no B719903 to read 'B719005.'" The Commission convened a hearing on March 17, 2017 on the statute of limitations and the merits of O'Neill's petition to re-open his award.

In an order dated April 27, 2018, the Commission held that O'Neill's petition was not barred by the limitations provision in Maryland Code, (1999, 2016 Repl. Vol.) Labor & Employment ("L&E") Article, Section 9-736(b), and issued O'Neill a supplemental award having found on the merits that his disability had worsened. The Commission reasoned that although O'Neill filed the May 17, 2016 issues under the wrong claim number,

> The employer/insurer was not prejudiced, however, because the employer/insurer was on notice of the issues, and the employer/insurer also requested a continuance in B719903 to schedule the claimant for an IME in its defense. The claimant attempted to correct the erroneous claim number by filing issues to do so in B719903 and also by filing a Request for Document Correction in B719905. The Commission finds that, since the employer/insurer suffered no prejudice by the claimant's timely filing of

[2] '3/17/16' must have been an error, since the first Issues form seeking to re-open the claim was filed on May 17, 2016.

> issues in the incorrect claim, limitations has not run in B719905. To find otherwise would be a severe injustice to the claimant.

The County timely appealed to the Circuit Court for Baltimore County and then filed a motion for a temporary restraining order on the Commission's award. After a hearing on the issue, the circuit court denied the County's motion for a restraining order.

Two months later, the County filed a motion for partial summary judgment on the statute of limitations issue and requested a hearing. On July 26, 2018, the circuit court held a hearing on the County's motion and affirmed the Commission's decision. The Court held:

> The only issue is this issue of how the Commissioner ruled on the question of the statute of limitations. This Court finds that the Commissioner's decision below on this issue was correct and I, I have listened very closely to the arguments of respective counsel. I, I know it's been pointed out to this Court repeatedly that prejudice is not something it should consider in deciding the statute of limitations issue. I, I think it's relevant. It's not the only consideration. I agree with the Commissioner, there was no prejudice here. Everyone was proceeding along as if it had been properly filed on the right number. It would be a great injustice to Mr. O'Neill if he is denied relief under a Petition for worsening of condition simply because some numbers were erroneously attached. The parties proceeded as they ordinarily would in connection with a Petition to Re-open by having their respective doctors examine the Petitioner. . . I do find that the Commission is within its authority to make that modificational correction simply on a case number. The substance of the claim never changed. Nothing was altered by the Commission making a correction, which I find, they had the power to do.

The County filed a timely appeal of this decision.

STANDARD OF REVIEW

"Generally, in an appeal from judicial review of an agency action, we review the agency's decision directly, not the decision of the circuit court." *Hranicka v. Chesapeake*

Surgical, Ltd., 443 Md. 289, 297 (2015). "Although that decision 'is presumed to be prima facie correct,'" that "presumption . . . does not extend to questions of law, which we review independently." *Id* (quoting Md. Code Ann., Labor & Empl. § 9–745(b)(1); *Johnson v. Mayor and City Council of Balt.*, 430 Md. 368, 376 (2013)). "An agency's interpretation of a regulation is a conclusion of law," and although we owe "a great deal of deference" to that interpretation, "it is always within our prerogative to determine whether an agency's conclusions of law are correct. Accordingly, we determine whether the [agency]'s conclusions are plainly erroneous or inconsistent with the regulation." *Hranicka*, 443 Md. at 297–98 (citations and internal quotation marks omitted).

The entry of summary judgment is governed by Maryland Rule 2–501, which provides:

> The court shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law.

Md. Rule 2–501(f).

The Court of Appeals has explained the standard of review of a trial court's grant of a motion for summary judgment as follows:

> On review of an order granting summary judgment, our analysis "begins with the determination [of] whether a genuine dispute of material fact exists; only in the absence of such a dispute will we review questions of law." *D'Aoust v. Diamond*, 424 Md. 549, 574 (2012). If no genuine dispute of material fact exists, this Court determines "whether the Circuit Court correctly entered summary judgment as a matter of law." *Anderson v. Council of Unit Owners of the Gables on Tuckerman Condo.*, 404 Md. 560, 571 (2008) (citations omitted). Thus, "[t]he standard of review of a trial court's grant of a motion for summary judgment on the law is de novo, that is, whether the trial court's legal conclusions were legally correct." *D'Aoust*, 424 Md. at 574.

Koste v. Town of Oxford, 431 Md. 14, 24–25 (2013).

In an appeal of a workers' compensation case, when the issue presented is an issue of law, "we review the decision de novo, without deference to the decisions of either the Commission or the circuit court." *Long v. Injured Workers' Ins. Fund*, 225 Md. App. 48, 57 (2015) (citing *Gross v. Sessinghause & Ostergaard, Inc*., 331 Md. 37, 45–48 (1993)). As this case presents issues of law only, we apply the de novo standard of review.

DISCUSSION

I. The Parties' Contentions

The County asserts that O'Neill's attempt to modify his award was not filed within the limitations period that ran on June 24, 2016. The County's argument hinges on acceptance of January 6, 2017—the date O'Neill first filed Issues to re-open his award under claim B719005—as the relevant application date. The County also contends O'Neill's request to modify his award was not filed with the required form and failed to allege worsening of a condition. The County asserts the plain meaning of the statutes imposing filing requirements and limitations dispose of this case, and that the court cannot loosely construe them in order to remedy a perceived unfairness to the claimant.

O'Neill counters the relevant application date is May 17, 2016, the date he first filed to modify his award, albeit under the previously dismissed claim, B719903. O'Neill asserts that the erroneous claim number, only "off by two digits," was "essentially a misnomer,"[3]

[3] The origin of the "misnomer" classification is Maryland Rule 2-341(c), which regards the doctrine of "relation back." The relevant parts read: "An amendment may seek (continued)

and as such should be recognized as a valid claim. O'Neill suggests the County was not prejudiced by his use of the incorrect claim number and lack of applicable form, since the submitted Issues form and accompanying physician report documenting worsening of his condition put the County on notice of his intent to modify his only previous award. O'Neill points to the County's subsequent actions of postponing the hearing on that claim in order to have O'Neill evaluated by its doctor, as proof of the County's notice prior to his January 6, 2017 filing. Specifically, regarding the form requirement, O'Neill cites COMAR 14.09.01.06 to posit the Commission had authority to waive such a requirement as "justice so require[d]." Finally, O'Neill says the Commission's decision to uphold his claim is consistent with the purpose of the Workers' Compensation Act, which seeks to remedy injured claimants, and that barring his claim would be severely prejudicial to him.

For the reasons that follow, we shall affirm the judgment of the circuit court, holding O'Neill's claim to modify his award is not barred by the statute of limitations.

II. Applicable Regulations

Title 9 of the Maryland Code of Labor and Employment addresses Workers' Compensation. Section 9-736 concerns the continuing jurisdiction of the Commission to modify claimants' awards, and Part (b)(3) provides, in relevant part

> [T]he Commission may not modify an award unless the modification is applied for within 5 years after the latter of (i) the date of the accident; (ii) the date of disablement; or (iii) the last compensation payment.

to . . . (4) correct misnomer of a party . . . Amendments shall be freely allowed when justice so permits."

LE § 9-736(b)(3). Section 3 of Title 9 provides "the Commission has the authority to 'adopt regulations to carry out' the Workers' Compensation Act. To that end, the Commission has promulgated certain regulations in Title 14, Subtitle 9 of COMAR." *Hranicka*, 443 Md. at 299 (quoting LE§ 9–309(a)). Contained in the "Hearing Procedures" chapter therein, COMAR 14.09.03.13(A)-(B) provides:

> A. A party seeking modification of a prior finding or order shall file the form captioned Motion for Modification and simultaneously file an Issues form identifying the issue to be resolved.
>
> B. A party seeking modification must file a Motion for Modification within 5 years of the later of the date of the accident, the date of disablement, or the date of the last compensation payment.

Chapter 1 of Subtitle 9, Workers' Compensation Commission, regards general administrative regulations. Md. Code. Regs. 14.09.01. COMAR 14.09.01.02(A) reads "Forms prepared by the Commission, and made available on the Commission's website. . . are mandatory and shall be used for filing claims, notices, requests, motions, and other papers as required by law, or by these regulations." COMAR 14.09.01.06 provides "When justice so requires, the Commission may waive strict compliance with these regulations."

III. Analysis

Although the parties' discussions of the statute of limitations and the proper form for modifying an award are somewhat intertwined, we find it useful to begin by addressing the County's contention that the form O'Neill used to attempt to re-open his claim was improper. If a failure to file a Motion for Modification form, or to expressly allege worsening of condition in an Issues form, renders claims invalid, then O'Neill's claim will necessarily be barred by limitations, since he did not take these steps at *any* time.

A. **Proper Form and Content for Petitioning to Modify a Claim**

The County asserts the plain meaning of COMAR 14.09.03.13(A)-(B) requires a party seeking modification of an award to file a Motion for Modification form. The County also posits a petition to modify a previous award must allege worsening of a condition, and states "[n]o documents/pleadings filed with the Commission [by O'Neill] alleged any worsening of condition." O'Neill counters that the form requirement may be waived by the Commission under COMAR 14.09.01.06, since "justice so requires." O'Neill asserts that worsening of his condition was clearly expressed from the Issues and the attachment of the doctor's report, and that it is undisputed the County understood what he was seeking.

1. Failure to Allege Worsening of Condition

The County directs us to *Buskirk v. C.J. Langenfelder & Son, Inc., et al.*, 136 Md. App. 261 (2000) for the requirement that a claimant must allege worsening of a condition to successfully petition to modify a claim. In *Buskirk*, the claimant received his final compensation payment from the insurer on July 31, 1992 and filed a Petition to Reopen for Worsening of Condition on May 13, 1993. *Id.* at 264. That petition was accompanied by a letter asking the Commission not to schedule a hearing until one was requested. *Id.* Roughly four years later, but still within the five-year limitations period, the claimant filed Issues seeking "Medical Care and Treatment—MRI lumbar spine." *Id.* at 265. The insurer requested a postponement of a hearing on grounds that the claimant was alleging worsening of a condition but had not provided any medical reports. *Id.* The claimant then filed a document correction, stating "the issue is medical care—authorization for MRI." *Id.* The

employer and insurer subsequently paid for the MRI. *Id.* It was not until September 15, 1997 that the claimant made another filing, this time requesting a modification to his temporary total disability benefits. *Id.* This Court disagreed that the claimant's May 13, 1993 filing "placed the Commission on notice of his worsening condition" for purposes of the statute of limitations, because it "was filed to seek medical benefits, which were paid," *id.* at 272, and it contained "no such request [for a change in disability status] nor a showing of such a basis." *Id.* at 264. We explained that to hold otherwise "would allow all recipients of workers compensation to file a protective petition for modification and avoid the statute of limitations in the event a change in disability status occurred at a future date." *Id.* at 272.

We find the concerns brought to light in *Buskirk* absent in the instant case. O'Neill's May 17, 2016 Issues form, while admittedly scant in detail[4] and unaccompanied by a Motion for Modification, did not imply O'Neill was merely seeking authorization for ongoing medical treatment. Critically, the Issues form was accompanied by a medical report in which Dr. Joshua Macht described O'Neill's increasing disability:

> [O'Neill] was adjudicated on June 9, 2011 as having a 16.2% industrial loss of use of the body which was apportioned to 7.7% for the neck and 8.5% for the back. **Since that time, he has developed worsened disease in his cervical and lumbar spine requiring several injections and nerve block procedures. He has worsened pain, loss of function, loss of endurance and weakness in his neck and back.** At this time, taking all of the factors into consideration along with the AMA Guidelines, **there is an increased 15% permanent partial impairment of his neck and 10%**

[4] The only substantive information provided on the May 17, 2016 Issues form is the listing of "Neck and back" to describe "Nature and extent of permanent disability to the following part or parts of the body."

> **permanent partial impairment of the back since June 9, 2011 due to worsening of his condition from the accident of April 21, 2009.**

(emphasis added). To further distinguish *Buskirk*, here, a hearing was scheduled on these Issues for which the County was promptly notified. It appears O'Neill's intent to claim worsening of his condition and to modify the previous award did not elude the County. On July 21, 2016, the County requested a continuance in order to have O'Neill rated by their doctor before the hearing. In the resulting medical report, Dr. Stephen Matz expressly addressed whether O'Neill's condition had worsened since his medical examination prior to the previous award: "there is 0% worsening of his back when compared to 06/09/11. There is 3% worsening of his neck when compared to 06/09/11." In contrast to the *Buskirk* claimant's request for continuing medical care, O'Neill's May 17, 2016 filing, at a minimum, made "a showing of such a basis" for worsening of condition and a change in disability status. *Buskirk*, 136 Md. App. at 264. As such, that filing cannot be said to be merely "a protective petition for modification [filed to] avoid the statute of limitations in the event a change in disability status occurred at a future date," as we feared in *Buskirk*. *Id.* at 272. We do not find O'Neill's May 17, 2016 filing to be invalid for failure to allege any worsening of his condition.

2. Failure to File a Motion for Modification Form

The County's contention that O'Neill's filing was invalid for failure to use a Motion for Modification form is a closer call. The intent of COMAR 14.09.03.13(A), which states, "A party seeking modification of a prior finding or order shall file the form captioned Motion for Modification," is unambiguous. In further support of its position, the County

cites *Johnson v. Mayor and City Council of Baltimore*, 430 Md. 368 (2013) to say the circuit court may not ignore the Act's statutory requirements in order to find for the claimant or otherwise remedy any perceived unfairness.

In *Johnson*, the issue before the Court of Appeals was whether the General Assembly's amendments to the Act making dependents of firefighters eligible for both pension and workers' compensation benefits after the firefighter's death, were to apply prospectively or retroactively. *Id.* at 371–73. The Court concluded through statutory interpretation that the amendments constituted a substantive rather than remedial change to the law, meaning they would only apply prospectively. *Id.* at 394. Thus, the petitioner, a wholly dependent spouse of a deceased firefighter whose case was pending when the amendments went into effect, was denied dual benefits. *Id.* at 395. In reaching this holding, the Court emphasized it was "not free to ignore the statutory requirement in order to remedy any perceived unfairness." *Id.* at 394 (quoting *Johnson v. Mayor and City Council of Baltimore*, 387 Md. 1, 21 (2005)).

We agree; a court may not act in contravention of clear statutory commands. But we are not convinced that allowing a claim to modify an award without the specified form implies complete disregard of a statutory requirement. While COMAR 14.09.03.13(A)-(B) states in no uncertain terms that a Motion for Modification form "shall" be filed, COMAR 14.09.01.06 just as clearly provides "When justice so requires, the Commission may waive strict compliance with these regulations."

We recognize there is some ambiguity as to whether the waiver of strict compliance in the Administrative Regulations chapter might apply to the procedural command for

modifying awards in the Hearing Procedures chapter. We nonetheless find that the waiver availability in COMAR 14.09.01.06 may apply to the Motion for Modification form requirement in COMAR 14.09.03.13.

First, we call attention to COMAR 14.09.01.02(A), which provides "[f]orms prepared by the Commission and made available on the Commission's website. . . are mandatory and shall be used for filing claims, notices, requests, motions, and other papers as required by law, or by these regulations." This regulation is in the same chapter of the code as the waiver of strict compliance. COMAR 14.09.01, Administrative Regulations. *Second*, we observe that the waiver regulation lists no exceptions as to where it may be applied. COMAR 14.09.01.06. Therefore, we infer that strict compliance with "mandatory" use of the Commission forms under COMAR 14.09.01.02 may be waived. *Third*, we note that because COMAR 14.09.01.02 mandates use of forms "as required. . . by these regulations," it encompasses regulations outside of the Administrative Regulations chapter, where the appropriate forms for "filing claims, notices, requests, motions, and other papers" are specified. In light of this, we conclude that the waiver of strict compliance regulation may also reasonably be applied to those regulations outside of the administrative chapter that require use of certain forms—such as COMAR 14.09.03.13 and the Motion for Modification form. If it is not intended for the Commission to have

authority to waive use of specified forms even when "justice so requires," the waiver regulation might specify that limitation. [5]

Next, we find that concerns for justice support waiving the Motion for Modification form requirement in these circumstances. As we have inferred from the record, the County was put on notice of O'Neill's intent to request a modification to his previous award based on an alleged worsening of his condition. The County has not shown, nor can we imagine, it would have prepared differently had a Motion for Modification form been filed. Therefore, the County was not prejudiced by O'Neill's failure to use the form. But, if the form requirement alone meant O'Neill could not pursue this claim, he would forever lose his opportunity to seek additional compensation for what he believes to be a worsening condition, despite having made an ostensible attempt to modify his award by obtaining and submitting the relevant medical evaluation within the required time period. Had O'Neill's Issues form not been accompanied by a medical report clearly alleging worsening of his condition, and had the County not responded in such a way that indicated its understanding of O'Neill's intentions, this issue might come out differently.

Setting aside the innerworkings of these regulations, we observe that our Court of Appeals recently upheld a claim to modify an award in the absence of a filed Motion for Modification. In *Gang v. Montgomery County*, 464 Md. 270 (2019) the Court of Appeals rejected Montgomery County's argument that the claimant's request for modification of

[5] We recently noted in *Mont. Co. v. Rios* (filed February 28, 2020) that "the Commission's regulations 'cannot override the plain meaning of the statute or extend its provisions beyond the clear import of the language employed."

the rate of compensation was barred by limitations due to his failure to file the Motion for Modification form. The Court found it sufficient that the claimant had filed a Request for Document Correction (alleging the error giving rise to his request for an increased compensation rate) within the five-year limitations period. *Id.* at 293. The County asserts that *Gang* does not resolve the instant case, because that claimant petitioned the Commission within the limitations period, while O'Neill did not. The County is correct insofar as *Gang* does not dispose of the limitations issue, because it is confounded by the use of an erroneous claim number. But *Gang* does support the position that the Motion for Modification form is not the *only* means of making a valid attempt to modify an award.

Finding that O'Neill's failure to file a Motion for Modification form is not fatal to his claim, we proceed to the statute of limitations issue.

B. Statute of Limitations

The parties disagree as to the date of O'Neill's first attempt to modify his award for limitations purposes. O'Neill asserts the erroneous claim number in the May 17, 2016 filing was merely a "misnomer," and thus does not defeat the validity of the filing for limitations purposes. The County contends the plain meaning of the limitations provision of Section 9–736 bars any modification of O'Neill's award, since his first attempt to modify an award under the only available claim, B719005, was filed outside the five-year period.

1. Plain Meaning of the Limitations Provision

The County's argument assumes an erroneous claim number forecloses the validity of a claim for limitations purposes. It supports this position by citing to our Court of Appeals' acknowledgment that the limitations provision of Section 9-736 is not subject to

"the general rule of liberal construction" applied to the rest of the Act. *Stachowski v. Sysco Food Services of Baltimore, Inc.*, 402 Md. 506, 513 (2007) (quoting *Stevens v. Rite-Aid*, 340 Md. 555, 568 (1995)). While we acknowledge the veracity of its point, we find other points in *Stachowski* more relevant to our review.

The issue before the Court of Appeals in *Stachowski* was whether the "date of last compensation payment" in § 9-736(b)(3) meant the date the claimant received the payment, or the date it was mailed by the insurer, in order to determine whether the claimant had filed within the limitations period or one day too late. 402 Md. at 511. Sysco, the employer, relied on the principle of strict interpretation of the limitations provision to posit that the "date of last compensation payment" should refer to the earlier of the two possible moments in time, when the payment was mailed. *Id.* at 524. The Court deemed Sysco's reliance to be misplaced, since strict construction does *not* mean the statute must be interpreted in the narrowest possible manner. *Id.* Further, the Court reasoned the definition of the date when payment occurs could not be crafted narrowly or liberally, and the Court should instead "seek a proper definition of the term." *Id.* at 525. The court then assessed definitions of "payment" in Black's Law Dictionary, the Maryland Uniform Commercial Code, other sections of the Act, and case law, to conclude the relevant date was when the claimant received the payment. *Id.* at 526–31.

Like the Court of Appeals in *Stachowski*, we do not find the plain meaning of § 9-736 (b)(3) dispositive. It reads, in relevant part:

> (3) …the Commission may not modify an award unless the modification is applied for within 5 years after the latter of:
> (i) the date of the accident;

(ii) the date of disablement; or
(iii) the last compensation payment.

LE § 9-736 (b)(3). Essentially, § 9-736 (b)(3) identifies the beginning and end of the limitations period. The parties disagree on neither of these, concluding limitations ran on June 24, 2016. The issue in this case, therefore, is not *when* limitations ran, or *whether* the five-year period should be strictly observed; rather it is whether a claim filed under an erroneous claim number may still be valid for limitations purposes. This inquiry is not resolved by the plain meaning of § 9-736, and so issues of strict or liberal construction are irrelevant. While a perfectly filed claim is the ideal and the Commission may reject claims for which a claim is entirely unclear, our inquiry cannot end with the assumption that nothing but a flawlessly filed claim will survive a limitations defense. We must look elsewhere for guidance.

2. "Misnomer" Cases

O'Neill describes *Nam v. Montgomery County*, 127 Md. App. 172 (1999) as an example of a case similar to this where a statute of limitations defense was rejected. It appears however that this Court *did accept* such a defense in *Nam* as barring a claimant from adding a new party after limitations had run. There, we recognized that through the doctrine of "relating back," Maryland does "permit liberal amendment of pleadings to add a party or correct the misnomer of a party." 127 Md. at 185 (citing Maryland Rule 2-341(c)). We explained "if the factual situation remains essentially the same after the amendment as it was before it, the doctrine of relation back applies and the amended cause of action is not barred by limitations." *Id.* at 186 (citing *Smith v. Gehring*, 64 Md. App.

359, 364 (1985)). Thus, we reasoned, the critical inquiry in a plaintiff's ability to add a party after the running of limitations regards notice to the party. *Nam*, 127 Md. App. at 186. We then applied the two-part analysis from *Smith v. Gehring*, which assesses "(1) who, on the facts of the case, was the appropriate defendant, and (2) whether that party had notice of his, or her, or its, intended status as defendant within the limitation period." *Id.* (quoting *Smith*, 64 Md. App. at 365). We found the amended claim naming the new party did not relate back to the original complaint, as the claimants failed to show the new party had previous notice of its intent to sue her. *Id.* at 187. We held, therefore, the amendment to add the new party was barred by the statute of limitations. *Id.* at 187.

O'Neill also urges that we follow the "relating back" argument accepted in *McSwain v. Tri-State Transportation Co., Inc.*, 301 Md. 363 (1984), to consider May 17, 2016 the applicable filing date. There, our Court of Appeals held the claimant's pleadings naming Tri-State Trucking ("Trucking"), rather than the intended employer, Tri-State Transportation ("Transportation"), was not grounds for barring the claim under a statute of limitations, which ran after the complaint had been served upon Transportation (albeit naming "Trucking" as the defendant). *Id.* at 365–66. The claimant filed an amendment declaration to change the defendant to Transportation two years after obtaining service on Transportation, but this time erroneously obtained service against Trucking. *Id.* at 366. The claimant finally obtained service on Transportation months later, but Transportation moved that the amended declaration should not be received and the circuit court granted the motion, leaving the original declaration against Trucking in effect. *Id.* at 366–67. Because of the case's "unique circumstances" in which Transportation had not been

prejudiced since it was served with the suit before the limitations had run, the two names were similar, and the error appeared to be inadvertent, the court held the claimant's error was a misnomer rather than a misjoinder (for which an amendment would not have been permissible, since no original defendant would be left standing). *Id.* at 370. As such, the court held the motion to not receive the amendment should have been denied as a matter of law, and so the case could proceed. *Id.* at 371. Thus, the complaint was not barred when it had been served on the intended party before limitations ran, despite having incorrectly named the party.

While we concede the instant case does not fit neatly in the "misnomer" category, we do find this line of cases provides useful goalposts for when courts may honor imperfect claims for limitations purposes. Essentially, were we to hold the County's timely notice of O'Neill's intent to modify his award and the basis for that request insufficient to defeat a limitations defense, we would be holding this claim to a higher standard than that applied to pleadings where a defendant's name is incorrect. We see no justification for effecting that distinction, where the opposing party in either scenario is placed on notice of all material information within the limitations period and can therefore prepare to defend against the claim.

Barring O'Neill's claim would only narrowly serve recognized legislative purposes for the limitations provision of § 9–736(b)(3) and for statutes of limitation in general. In *Stachowski*, the Court of Appeals explained "the purpose of strict enforcement [of that limitations provision of § 9–736(b)(3)] . . . is to encourage a bright line rule and disallow claims beyond the statutory period provided." 402 Md. at 524. The court further opined

that statutes of limitation "foster[] predictable outcomes in otherwise unpredictable situations," and "serve[] the purpose of limiting liability when the reopening of a claim is too attenuated from the original injury." *Id.* at 524–25. In *Vest v. Giant Food Stores, Inc.*, 329 Md. 461 (1993), the Court of Appeals explained:

> [A]ny attempt to reopen a case based on an injury ten or fifteen years old must necessary encounter awkward problems of proof, because of the long delay and the difficult of determining the relationship between some ancient injury and a present aggravated disability. Another argument is that the insurance carriers would never know what kind of future liabilities they might incur, and would have difficulty in computing appropriate reserves.

Stachowsky, 402 Md. at 525 (quoting *Vest*, 329 Md. at 471). This Court has also recognized the significance of notice in limitations provisions generally:

> The "purpose of the statute" of limitations "does not extend to situations where, in the words of Justice Holmes, 'a defendant has had notice from the beginning that the plaintiff sets up and is trying to enforce a claim against it because of specified conduct.'"

Youmans v. Douron, Inc., 211 Md. App. 274, 304–05 (2013) (citing *Doughty v. Prettyman*, 219 Md. 83, 92–93 (1959) (quoting *New York Central & Hudson R.R. v. Kinney*, 260 U.S. 340, 346 (1922))).

Barring O'Neill's claim would admittedly signal to claimants the need to exercise care in filing and to submit claims well within five years so that any initial mistakes can be remedied before limitations run. But this approach would also make it possible for the opposing party to notice the minor error, but to refrain from raising the issue until limitations have run, regardless of its ability to prepare to defend against the merits of the claim.

Further, evidentiary challenges presented by claims raised long after the original injury are irrelevant to claims like O'Neill's that are filed within five years but contain an administrative error. And it cannot be said that permitting a claim that includes all relevant factual information, but contains an administrative error, would hinder the ability of insurance carriers to anticipate potential liabilities. We conclude that O'Neill's May 17, 2016 filing was valid, and so his petition to modify his award was not barred by limitations.

We share one final observation of the unique circumstances of this case. The initial hearing before the Commission proceeded and was concluded under the incorrect claim number. Although the County asserts the award paid on June 24, 2011 was "in claim B719005," (the correct claim number), the check includes no reference to a claim number, and the record indicates O'Neill did not file to advise the Commission of its use of the incorrect claim number until July 12, 2011. Although the record is ambiguous on these details, it does not show the County claimed the entire hearing should be declared void or that its payment to O'Neill be rescinded and reissued following the Commission's new order. It appears, at that time, the County did not feel the erroneous claim number was egregious enough to defeat the validity of the proceedings that had just occurred. Likewise, when O'Neill filed his petition to modify the award, the County knew which injury and award to which his petition referred. We fail to see why we should now view the error as reason to disregard entirely O'Neill's May 17, 2016 filing.

CONCLUSION

In light of the specific facts presented here, where the original source of the error is unknown but resides at least partly with the Commission, and the earliest, albeit erroneous filing, placed the County on notice of all material facts regarding the claimant's intent to modify his award, we affirm the circuit court's holding that O'Neill's petition is not barred by limitations. We nonetheless emphasize the narrowness of our holding. We do not purport to say that every administrative error—or even every erroneous claim number—made by a claimant can thwart a limitations defense. Any court should consider the source of the error and any unfair advantage the error may afford the claimant.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. BALTIMORE COUNTY TO PAY THE COSTS.