

Circuit Court for Baltimore County
Case No. 03-C-17-001292

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2277

September Term, 2017

CHARLENE MORTON-WALLACE

v.

STELLA MARIS, et al.

*Wright,
Reed,
Friedman,

JJ.

Opinion by Reed, J.

Filed: February 13, 2020

* Wright, Alexander J., now retired, participated in the hearing of this case while an active member of this Court; after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and the preparation of this opinion.

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Charlene Morton-Wallace (hereinafter “Appellant”) filed a workers’ compensation claim against Stella Maris, her employer, and Mercy Medical Center, the insurer, (collectively “Appellees”) for an injury that occurred on July 12, 2005. The Workers’ Compensation Commission (hereinafter “the Commission”) granted Appellant’s request and found that Appellant had sustained a 1% increase in permanent partial disability to her back. The Commission also denied Appellees’ Statute of Limitations defense claim. Subsequently, Appellees filed a Petition for judicial review by the Circuit Court for Baltimore County. On November 9, 2017, the Honorable Keith Truffer reversed the Commission’s decision. Judge Truffer found that the Commission “misconstrued the law and facts applicable” to the case at bar. On November 17, 2017, Appellant filed a Motion to Alter Judgment and Memorandum, which was denied on December 20, 2017. It is from this denial that Appellant files this timely appeal. In doing so, Appellant brings the following questions for our review, which we have rephrased for clarity:¹

¹ Appellant presents the following questions:

1. In a judicial review on the record of a workers’ compensation award of worsening of permanent partial disability, did the circuit court err when it questioned the commissioner’s finding as to the injured worker’s veracity and ruled that the commissioner “misconstrued the facts applicable in the case decided” but without finding the commission clearly erroneous?
2. Was it error for the trial court in a record appeal to rule that the commission “misconstrued the law applicable in the case decided” on the theory that the commissioner should have denied the request for modification under the statute of limitations defense because of the court’s concern for Maryland public policy without specifying what law she misconstrued?

- I. Did the circuit court err when it questioned the Commission’s findings of fact?
- II. Did the circuit court err when it found that the Commission should have granted Appellees’ Statute of Limitations defense claim?

For the foregoing reasons, we answer in the negative and affirm the decision of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On July 12, 2005, Appellant injured her back while lifting a patient during the course of her employment. Appellant filed a claim with the Commission for injuries she sustained to her back and her ribs. On August 25, 2006, the Commission found that Appellant had sustained a 13% industrial loss of her body due to Appellant’s back injury. The Commission also found that 6% of Appellant’s injuries were due to a pre-existing condition and 0% disability was due to Appellant’s rib injury. The Commission awarded Appellant \$550.45 per week for temporary total disability and \$114.00 per week for permanent partial disability. On March 25, 2011, Appellant petitioned to modify the prior award because Appellant alleged that her back injury had worsened. On June 16, 2011, the Commission found that Appellant had sustained a 19% industrial loss of use of her back with 6% due to pre-existing conditions and modified her award.

On June 24, 2016, Appellant filed for a modification for a second time. Appellant alleged that her back condition had worsened. A hearing was set for October 6, 2016, but Appellant filed a Request for Continuance. In Appellant’s Request for Continuance, Appellant stated that she filed an Issues Form “right before the Statute of Limitations” and

requested additional time to gather her medical reports. Appellees objected to Appellant's request. The Commission granted the request and on November 11, 2016, Appellees raised a Statute of Limitations defense claim. On January 12, 2017, Appellant was evaluated by Dr. Robert Macht who reported that Appellant's back condition had worsened. The next day, Dr. Macht's impairment ratings evaluation report was provided to Appellees. On January 13, 2017, a hearing was held and Appellees argued that Appellant's impairment ratings report was obtained after the statute of limitations had expired. The Commission ultimately found that Appellant had sustained a 1% increase to the injuries to her back and denied Appellees' Statute of Limitations defense claim.

Subsequently, Appellees filed a Petition for judicial review by the Circuit Court for Baltimore County. On November 9, 2017, the Honorable Keith Truffer reversed the Commission's decision. Judge Truffer found that the Commission "misconstrued the law and facts applicable in the case decided." On November 17, 2017, Appellant filed a Motion to Alter Judgment and Memorandum, which was denied on December 20, 2017. It is from this denial that Appellant files this timely appeal.

STANDARD OF REVIEW

"Appeals from the Workers' Compensation Commission to the circuit court are conducted essentially as trials *de novo*." *Barnes v. Children's Hosp.*, 109 Md. App. 543, 553 (1996). If a party subsequently moves to appeal the circuit court's judgment, and such proceeding was heard without a jury, this Court will apply the clearly erroneous standard when reviewing the court's factual findings. *Id.* at 552-53 ; *see also* Maryland Rule 8-131(c). In exercising our scope of appellate review, "[w]e will view the evidence in the

light most favorable to the prevailing party,” and we “will assume the truth of the evidence presented and give the prevailing party the benefit of all favorable inferences fairly deducible therefrom.” *Id.* at 553.

However, the “trial court’s determinations of legal questions or conclusions of law based on findings of fact,” is not governed by the clear and erroneous standard. *Id.* “The Maryland Workers’ Compensation Act, which entitles covered employees to compensation for accidental personal injuries that arise out of and in the course of employment...is a remedial statute.” *Id.* Therefore, “its provisions are liberally construed in favor of the employee,” and “any ambiguity in the law is resolved in favor of the claimant.” *Id.* at 553-54.

DISCUSSION

A. Parties’ Contentions

Appellant argues that the circuit court used the wrong standard of review when it ruled in Appellees favor. Appellant contends that the circuit court should not have applied a *de novo* standard of review for an on the record appeal. Specifically, Appellant maintains that the circuit court purports to have applied MD. CODE ANN. LAB. & EMPL. Article §9-745 (c) as the standard of review that it applied but failed to do so. Appellant asserts that the circuit court applied a *de novo* standard of review because the circuit court declared it “will review the Commission’s decision *de novo*.” Appellant contends that the circuit court’s task was to determine if the Commission’s decision was “unsupported by legally sufficient evidence.” Appellant argues that the circuit court’s memorandum “finds nothing clearly erroneous about the facts on which the [Commission] relied” on. Appellant further

argues that “[i]t is very unusual for a judge without jury [sic] to reverse the [Commission] because of the deference paid to administrative agencies who are deemed to be experts in their field.” Appellant maintains that the circuit court was required to find that the Commission was clearly erroneous in its fact finding. Appellant asserts that the Commission waived the requirement for an impairment evaluation before the statute of limitations expired “because [the Commission] found convincing evidence of a change in disability with a basis in fact, as required by *Dove* and *Buskrik*.” Appellant argues that the Commission has the authority to waive strict compliance with the rules when justice so requires it. Lastly, Appellant argues that the circuit court misconstrued the law applicable to this case. Specifically, Appellant contends that the circuit court “concluded that the [Commission] generally misconstrued the controlling law without specifying [the Commission’s] error.”

Appellees respond that the circuit court applied the correct standard of review for an on the record appeal. Specifically, Appellees contend that Appellant is misguided when Appellant states that the circuit court applied a *de novo* standard of review. Appellees argue that “it is clear from the [c]ircuit [c]ourt’s Memorandum Opinion that it is referring specifically to a *de novo* review of the legal question at hand, and not the facts of the case.” Appellees maintain that the circuit court made it clear in its memorandum that the facts to this case are undisputed. Appellees argue that this case requires an on the record appeal which requires this Court to take “no new evidence” and that this Court “reviews the proceedings before the Commission as a matter of law.” Appellees maintain that after the circuit court concluded that the facts were undisputed the circuit court then concluded that

the issue before it involved “only a legal question to be reviewed *de novo*.”

Finally, Appellees argue that the Commission misconstrued the law as it applied to the facts, when it denied Appellees’ Statute of Limitations defense claim. Appellees further argue that since the facts were undisputed and confined within the record, the circuit court was “left only with an analysis as to whether the Commission misconstrued the law.” Appellees maintain that pursuant to COMAR 14.09.09.02 Appellant was required to obtain a written impairment evaluation prior to filing an Issues Form to modify her permanent disability. Appellees allege that Appellant obtained her impairment evaluation after the statute of limitations period had run. Appellees contain that there is a five year statute of limitations period for a claimant to file a Request for Modification of an award. Appellees assert that Appellant did not file the necessary documentation to modify Appellant’s claim before the statute of limitations had expired. We agree.

B. Analysis

i. Standard of Review

Appellant maintains that the circuit court used the wrong standard of review when it ruled in Appellees favor. Appellant contends that the circuit court should not have applied a *de novo* standard of review for an on the record appeal. Appellant argues that the circuit court purports to have applied MD. CODE ANN. LAB. & EMPL. §9-745 (c) as the standard of review that it applied but failed to do so. Specifically, Appellant asserts that the circuit court stated in its memorandum that “[Appellees’] arguments revolve around a question of law, specifically interpretation of a regulation applicable to the filing of workers’ compensation commission claims and the application of the statute of limitations, the court

will review the Commission’s decision *de novo*. *McLaughlin v. Gill Simpson Elec.*, 206 Md. App. 242, 257, 47 A.3d 1074, 1083 (2012).” Appellant also argues that the circuit court found that the Commission’s finding of facts were clearly erroneous and unsupported by legally sufficient evidence.

In Maryland, grieved workers are afforded the opportunity to appeal decisions from the Commission. Such “appeals are presented to trial courts in one of two fashions: (1) the submission of the case to the judge on the basis of the record made before the Commission; or (2) a *de novo* evidentiary hearing before the court sitting with or without a jury.” *Bd. of Educ. For Montgomery County v. Spradlin*, 161 Md. App. 155, 166-67 (2005) (citations omitted). In *Spradlin*, this Court explained:

From the first enactment of the Workmen’s Compensation Act by Chapter 800 of the Acts of 1914, Maryland has provided two different strategies of appeal to the circuit court from a decision of the Workers’ Compensation Commission, formerly known as the Workmen’s Compensation Commission and before that as the State Industrial Accident Commission. The first of the available appellate modalities, essentially unchanged since 1914, is now spelled out by Maryland Code, Labor and Employment Article, § 9-745(c) and (e). It is in every respect a routine administrative appeal. It is an appeal to the judge alone, and, even then, only in his capacity of a legal referee and not in the capacity of a fact finder. As with appeals from other administrative agencies, the judge reviews the record of the proceeding before the Commission and decides, purely as a matter of law, whether the Commission acted properly. Subsection (c), entitled “Determination by court,” spells out:

(c) *Determination by court.* - The court shall determine whether the Commission:

- (1) justly considered all of the facts about the accidental personal injury, occupational disease, or compensable hernia;
- (2) exceeded the powers granted to it under this title; or
- (3) misconstrued the law and facts applicable in the case decided.

Subsection (e) then clearly makes the ultimate disposition of the appeal turn

on the determination of whether the Commission, as a matter of law, acted correctly or incorrectly.

(e) *Disposition*-(1) If the court determines that the Commission acted within its powers and correctly construed the law and facts, the court shall confirm the decision of the Commission.

(2) If the court determines that the Commission did not act within its powers or did not correctly construe the law and facts, the court shall reverse or modify the decision or remand the case to the Commission for further proceedings.

The reference in subsection (c) to whether the Commission “misconstrued the law” is free of ambiguity. The reference to whether the Commission “misconstrued the... facts,” on the other hand, does, or once did, present a potential semantic snare. As legal science has developed, however, it should now be clear that reference is only to the issue of whether the Commission’s fact-finding was, as a matter of law, clearly erroneous because not supported by legally sufficient evidence. It is our firm and well-considered opinion that “misconstruing the facts” means fact-finding that is clearly erroneous and does not mean simply finding a version of the facts that happens to be different from the one found *de novo* by a reviewing court. As subsection (c) expressly provides, the question of whether the Commission “misconstrued the... facts” calls for a “Determination by Court” and does not depend upon the random chance of whether a *de novo* jury happened to reach a different conclusion from that reached by the Commission.

In *Thomas, Inc. v. Thompson*, 114 Md. App. at 364, we discussed how this modality of appeal from the decision of the Commission is indistinguishable from a routine administrative appeal.

[This type of appeal] is pursuant to Labor and Employment Art. §9-745 (e), which *replicates the routine appeal process from administrative agency decisions generally*. According to that modality, the circuit court reviews the Commission’s action on the record and determines whether the Commission 1) acted within its power and 2) correctly construed the law and facts.

(Emphasis supplied).

Bd. Of Educ. For Montgomery County v. Spradlin, 161 Md. App. 155, 167-69

(2005).

Moreover, this Court has thoroughly explained in detail these two modalities in *Board of Edu. for Montgomery County v. Spradin*, 161 Md. App. 155 (2005). In *Spradin*, Joannie M. Spradlin, the appellee, filed a claim with the Workers’ Compensation Commission (“the Commission”), against her employer, the Board of Education for Montgomery County (“Montgomery County”) for injuries she sustained after being allegedly assaulted by her co-worker. *Id.* at 160. Spradlin alleged that she was physically assaulted by her co- worker on November 22, 2002, at the West Farm Depot of the Montgomery County Board of Education, where the appellee and her co- worker were employed. *Id.* at 162. Spradlin alleged that she was watching television in the lounge area provided by Montgomery County. *Id.* Subsequently, Spradlin had left the room briefly and then returned to find that the television set had been changed to another channel by her co-worker. *Id.* The appellee testified to the following:

I had asked my coworker to change the TV because I had been watching channel 7. She said, yes, she changed it to channel 9. I started to leave, pick up my stuff and I said, well, it’s just as well because I have to go on my bus run anyway. She said, I know you’re not talking to me. You come back here if you’re talking to me. I said, no, if I was talking to you, I’d come and say it to your face.

Id. at 162–63. Spradlin alleged that her co-worker verbally and physically assaulted her.

Id. at 163. However, Spradlin’s co-worker testified that Spradlin was the aggressor and that Spradlin physically attacked her first. *Id.* at 163–164. The Commission ruled in favor of Montgomery County finding that “[Spradlin] did not sustain an accidental injury arising out of and in the course of [sic] employment”, without stating which defense theory it was relying on. *Id.* at 165–66.

Spradlin appealed the Commission’s decision to the circuit court and opted for a *de novo* trial without a jury. The Honorable William J. Rowan, III, “as the fact finder, was persuaded that the [appellee] had ‘sustained an accidental personal injury in the course of employment’ and accordingly reversed the decision of the Commission.” *Spradlin*, 161 Md. App. at 161. Montgomery County appealed the circuit court decision to this Court posing the question: “Once the circuit court determined that the [appellee] and the employer’s witness were equally credible, *should the court have given due weight to the presumption of correctness of the Commission’s decision?*” *Id.* We upheld the circuit court’s decision. However, we went into a discussion about the two modalities in which a court can review a decision from the Commission.

The practice is that *appeals are presented to trial courts in one of two fashions*: (1) the submission of the case to the judge on the basis of the record made before the Commission; or (2) a *de novo* evidentiary hearing before the court sitting with or without a jury.

Id. at 166–67. See *Applied Industrial Technologies v. Ludemann*, 148 Md. App. 272, 282 (2002); see also R.P. Gilbert and R.L. Humphrey, *Maryland Workers’ Compensation Handbook* (2d ed. 1993), § 17.4, p. 342. The first modality applies to the case at bar, an on the record appeal.

Pursuant to an on the record appeal we have stated that no new evidence is evaluated and the reviewing court reviews the record as a matter of law. In Judge Truffer’s Memorandum Opinion, he stated that the standard of review to apply to the case at bar was MD. CODE ANN. LAB. & EMPL. §9-745 (c). However, Judge Truffer later states in his Memorandum Opinion:

Because [Appellees’] arguments revolve around a question of law, specifically the interpretation of regulations applicable to the filing of workers’ compensation claims and the application of the statute of limitations, the court will review the Commission’s decision *de novo*. *McLaughlin v. Gil Simpson Elec.*, 206 Md. App. 242, 257, 47 A.3d 1074, 1083(2012).

Here, Appellees argue that Appellant filed her impairment ratings report after the statute of limitations expired pursuant to MD. CODE ANN. LAB. & EMPL. § 9-736 (b)(3). Accordingly, the question of whether Appellant filed her impairment ratings report after the statute of limitations expired involves a question of law. We have repeatedly stated that where the issue “concerns a question of law, specifically one of statutory interpretation, we review the Commission’s decision *de novo*.” *See McLaughlin*, 206 Md. at 257; *see also Kelly v. Consolidated Delivery Co.*, 166 Md. App. 178, 185 (2005); *Uninsured Employers’ Fund v. Pennel*, 133 Md. App. 279, 288 (2000). We have also stated that Maryland courts apply a *de novo* standard of review of a legal question despite the modality of the appeal. *Pennel*, 133 Md. App. at 289-90. Moreover, Appellant’s argument that the circuit court found that the Commission’s findings of fact were clearly erroneous has no merit. Specifically, Judge Truffer never stated in his opinion that the Commission’s findings of fact were clearly erroneous or unsupported by legally sufficient evidence.

Accordingly, we hold that the circuit court was correct when it applied a *de novo* standard of review because the issues presented before the court involved a legal question.

ii. The Law As it Applies to the Facts of the Case at Bar

Appellant argues that the circuit court misconstrued the law applicable to this case. Specifically, Appellant contends that the circuit court “concluded that the [Commission]

generally misconstrued the controlling law without specifying [the Commission’s] error.”

MD. CODE ANN., LAB. & EMPL. § 9-736 (b)(3) prescribes the time period in which a claimant can modify an award. It prescribes as relevant:

Continuing powers and jurisdiction; modification

(b)(1) The Commission has continuing powers and jurisdiction over each claim under this title.

(2) Subject to paragraph (3) of this subsection, the Commission may modify any finding or order as the Commission considers justified.

(3) Except as provided in subsection (c) of this section, 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.

MD. CODE ANN., LAB. & EMPL. § 9-736 (b).

In *Buskrik v. C.J. Langenfelder & Son, Inc.*, 136 Md. App. 261, 270-271 (2001), we stated the following:

Ordinarily, remedial legislation is “construed liberally in favor of injured employees in order to effectuate the legislation’s remedial purpose.” *Marsheck v. Board of Trustees of the Fire & Police Employees’ Retirement Sys.*, 358 Md. 393, 403 (2000); *see Martin v. Beverage Capital Corp.*, 353 Md. 388, 400 (1999); *Montgomery County v. McDonald*, 317 Md. 466, 472 (1989). This general rule of construction does not apply to limitations provisions, however, including the one in question. *See Stevens v. Rite-Aid Corp.*, 340 Md. 555, 569 (1995) (“The general rule of liberal construction of the Workers’ Compensation Act is not applicable to the limitations provision of section 9-736.”).

Buskrik v. C.J. Langenfelder & Son, Inc., 136 Md. App. 261, 270-271 (2001).

Appellees maintain that Appellant was required to file her impairment ratings form

prior to the statute of limitations expiring. Appellant argues that Appellees' argument has no merit. Specifically, Appellant relies on our decision in *Dove v. Montgomery Co. Educ.*, 178 Md. App. 702 where we stated:

We read nothing in these regulations to require that a claimant file all supporting documentation with a request for modification of an award. Rather, at the time of filing, a claimant is only required to provide relevant medical information to the other involved parties (*i.e.*, employer and insurer) that is in his or her possession. Moreover, these regulations clearly contemplate the use of medical information received by either party after the claim is filed with the Commission.

Dove v. Montgomery Co. Educ., 178 Md. App. 702, 716 (2008).

In 2014, COMAR 14.09.09.02 was adopted and required claimants to obtain an evaluation prepared by a physician citing to the permanent impairment prior to filing an Issues Form. COMAR 14.09.09.02 prescribes as relevant:

A. A claimant alleging permanent disability shall file with the Commission an Issues Form that:

- (1) Explicitly claims permanent partial or permanent total disability;
- (2) Identifies the body parts at issue; and
- (3) Identifies any alleged psychiatric disability.

B. Prior to filing an Issues Form raising permanent disability, the party filing the issue *shall* have obtained a written evaluation of permanent impairment prepared by a physician, psychologist, or psychiatrist in accordance with Regulation .03 of this chapter.

COMAR 14.09.09.02 (emphasis added). The record shows that on August 25, 2006, Appellant was given her original award as it related to the injuries to her back. Subsequently, Appellant filed a modification of that award on June 16, 2011, less than 5 years later and before the statute of limitations expired. The record also indicates that as of June 24, 2016, more than 5 years after her June 16, 2011, award, Appellant had not obtained

a written impairment evaluation report from her physician as it related to her back. Furthermore, the record shows that on June 7, 2016, Appellant was examined by Dr. Julianne Bethea. However, her notes make no mention of any complaints Appellant made about her back. Moreover, during the Commission’s hearing on January 13, 2017, Appellant conceded that Dr. Bethea’s notes make no mention of her back. It wasn’t until January 12, 2017, more than 5 years after Appellant’s June 16, 2011, modification award, that Dr. Macht evaluated Appellant and provided a report that stated Appellant’s back had worsened.

As noted above prior to the adaptation of COMAR 14.09.09.02 filing requirements were interpreted liberally. *See Dove v. Montgomery Co. Educ.*, 178 Md. App. 702, 716 (2008). Appellant testified at the Commission hearing that she reported her back condition to Dr. Bethea. However, there is no mention of Appellant’s back condition in Dr. Bethea’s report. Maryland’s regulatory code makes it mandatory that claimants in Workers’ Compensation claims “[p]rior to filing an Issues Form raising permanent disability, the [claimant] filing the issue *shall* have obtained a written evaluation of permanent impairment prepared by a physician.” COMAR 14.09.09.02 (B). Although COMAR 14.09.09.02 (B) did not exist when this Court decided *Dove*, it is impossible to interpret the strict requirement in COMAR 14.09.09.02 (B) in Appellant’s favor. The regulation makes it clear that prior to a claimant filing an Issues Form the claimant must obtain a “written evaluation” citing to the permanent impairment from the claimant’s physician.

Accordingly, Appellant's failure to obtain a written impairment ratings report from her physician within the statute of limitations is a bar to the modification of Appellant's award.

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