UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2364

September Term, 2016

BOARD OF EDUCATION OF
MONTGOMERY COUNTY,
MARYLAND

v.

DARLENE M. HAMILTON

Wright,
Leahy,
Friedman,

JJ.

Opinion by Wright, J.

Filed: February 22, 2018

This appeal follows the entry of a judgment in the Circuit Court for Montgomery County, after consideration of the Board of Education of Montgomery County's ("the County") request for judicial review of a decision and order of the Maryland Worker's Compensation Commission ("the Commission"). The Commission ordered the County to pay the medical expenses of Darlene Hamilton ("Ms. Hamilton), appellee, from March 30, 2015, to January 18, 2016. The County appealed the Commission's decision, to the circuit court which subsequently affirmed. The County now appeals to this Court, presenting the following question for our review:

> Did the circuit court err in finding Appellee presented the minimum evidence required for the Commission to determine that the low back and related treatment from March 30, 2015 through January 18, 2016 was causally related to accidental injury on October 21, 1997?

Answering the question in the negative, we affirm the judgment.

BACKGROUND

The present case arises from an accident occurring on October 21, 1991. Ms. Hamilton was employed as a cosmetology teacher for the Montgomery County Public School System. In class, while demonstrating how to give a manicure, Ms. Hamilton's stool slipped from beneath her. She fell onto her back, suffering injury. Ms. Hamilton filed a worker's compensation claim in December 1991, and she was awarded compensation for Permanent Partial Disability, assessed as thirty-five percent loss of use of the body, with thirty percent of the disability attributable to the aforementioned injury, and five percent attributable to pre-existing condition.

Ms. Hamilton received ongoing treatment for her back through the 1990s, and in the year 2000 underwent surgery for anterior L3 to L5 fusion. In January of 2010, Dr. Bhatnagar of Potomac Valley Orthopaedic Associates ("Potomac Valley") noted an impression of "degenerative disk disease with low back pain," and in March of the same year, that she had "significant degenerative changes throughout her spine extending from T12 through S1." In a May 2010 note, Dr. Bhatnagar stated, "I do think that she continues to have problems related to original injury/surgery with her back." With respect to her weight, he "reiterated to her the importance of losing weight as well as exercise and conditioning," finding that doing so would have "the best chance of helping her with her pain." In March of 2015, Ms. Hamilton saw Dr. Mathur, also of Potomac Valley, and had two subsequent visits with him in August of 2015 and January of 2016. During the August visit, Dr. Mathur recommended Ms. Hamilton undergo a low-back MRI. The Commission declined to cover the latest round of treatment.

In December of 2015, Ms. Hamilton filed issues with the Commission. At an April 1, 2016 hearing, the County argued, on the basis of the 2010 treatment notes, that Ms. Hamilton's weight, and not her original injury, caused her continuing medical problems. Conversely, Ms. Hamilton argued that she had periodic but consistent treatment for the same issues dating back to the 1991 fall. Ultimately, the Commission awarded Ms. Hamilton compensation for the medical expenses incurred at Potomac Valley from August 2015 to January 2016, as well as for the accompanying MRI. In so deciding, it concluded that Ms. Hamilton's lower-back issues precipitating the 2015 and 2016 treatment were causally related to the initial October 21, 1991 injury.

The County filed a timely appeal, on the record, to challenge the Commission's award. In a hearing before the circuit court, the County argued that, before the Commission, Ms. Hamilton failed to meet her burden of proof to demonstrate the existence of a causal relationship between the contested treatment and the original 1991 injury, having provided no expert testimony to that effect. The County also contended that the burden had been impermissibly shifted to it by the Commission. Attempting to bolster its argument by undermining the notion of sufficient causal relation, the County relied on doctors' notes emphasizing Ms. Hamilton's obesity as a significant medical issue, characterizing it as an alternate cause.

In response, Ms. Hamilton argued that her weight exacerbated the pre-existing issue, but did not serve as an independent cause of the discomfort requiring treatment. She noted that she continually sought treatment from the time of the initial injury, and that the County had failed to provide any evidence indicating that the 1991 injury was *not* causally related to the 2015 and 2016 treatment.

In making its decision, the circuit court first addressed the County's contention that the burden of proof had been incorrectly and impermissibly shifted. The court determined that, even if there had been a shift in the burden, because there was substantial evidence in the record to support the decision, the error was inconsequential. The court also noted its reticence to substitute its judgment for that of the agency, and that there was a presumption in favor of the correctness of the agency's decision.

Turning to the substantive issue of causation, the circuit court judge relied on the May 2010 note, in which the attendant physician noted that Ms. Hamilton "continues to

have problems related to original injury/surgery with her back." The judge also noted that the degeneration in the back embraced that area where the accident occurred and was the subject of the surgery. On the basis of the foregoing, the judge found that there was a causal relationship between the low-back pain that led Ms. Hamilton to seek treatment and the original accidental injury, and the court affirmed the Commission's decision.

Additional facts will be added as they become relevant to our analysis.

STANDARD OF REVIEW

"Workers' compensation cases . . . occupy a special niche in Maryland civil law." *Baltimore Cty. v. Kelly*, 391 Md. 64, 67 (2006). The Maryland Workers' Compensation Act ("the Act") provides monetary benefits to workers suffering accidental injuries that "[arise] out of and in the course of employment." Md. Code (1993, Repl. Vol. 2008), Labor & Employment Article ("L&E") § 9-101(b)(1). "'Arises out of' refers to the causal connection between the employment and the injury." *Livering v. Richardson's Rest.*, 374 Md. 566, 574 (2003). The phrase does not, however, require that an injury be caused directly by an employment related task; rather, the test is whether "the injury be incidental to the employment, such that it was by reason of the employment that the employee was exposed to the risk resulting in the injury." *Id.* at 574-75 (quoting *Mulready v. Univ. Research Corp.*, 360 Md. 51, 57 (2000)). The determination as to whether an injury arises out of or in the course of employment is based on the facts and circumstances of each individual case. *Id.* at 574 (citing *Knoche v. Cox*, 282 Md. 447, 454 (1978)).

The Act is "remedial social legislation designed to protect workers and their families from various hardships that result from employment related injuries." *Id.* (citation omitted). As such, the Act ought to be liberally construed in favor of injured employees. *Id.*

In terms of procedure, employees seeking workers' compensation benefits for a work-related injury must first file a claim with the Commission. *See* L&E § 9-709. The "Commission is an administrative agency and was created specifically to develop an expertise in its field. The Commission forms part of a comprehensive scheme of liability set up by the Workmen's Act, which largely abrogates the common law." *Newell v. Richards*, 323 Md. 717, 732 (1991).

"A party dissatisfied by the action of the Commission may seek review in a circuit court by either proceeding on the record made before the Commission (much like judicial review of the final action of most state administrative agencies) or receive a new evidentiary hearing and decision before a jury (much like an original civil complaint brought in a circuit court)." *Kelly*, 391 Md. at 67-68 (2006); L&E § 9-745.[1] The former

[1] L&E provides the following procedure for circuit court proceedings for appeals of decisions from the Commission:

(a) *In general.*—The proceedings in an appeal shall:

(1) be informal and summary; and

(2) provide each party a full opportunity to be heard.

(b) *Presumption and burden of proof.*—In each court proceeding under this title:

modality, pursuant to L&E § 745(e) "replicates the routine appeal process from administrative agency decisions," and allows the circuit court to "[review] the Commission's action on the record" to "[determine] whether the Commission 1) acted within its power and 2) correctly construed the facts." *S.B. Thomas, Inc. v. Thompson*, 114 Md. App. 357, 364 (1997). The latter approach, pursuant to LE § 745(d) provides for what is essentially "a *de novo* evidentiary hearing before the court sitting with or

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> (1) the decision of the Commission is presumed to be *prima facie* correct; and
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> (2) the party challenging the decision has the burden of proof.
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> (c) *Determination by court.*—The court shall determine whether the Commission:
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> (1) justly considered all of the facts about the accidental personal injury, occupational disease, or compensable hernia;
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> (2) exceeded the powers granted to it under this title; or
>
> (3) misconstrued the law and facts applicable in the case decided.
>
> (d) *Request for jury trial.*—On a motion of any party filed with the clerk of the court in accordance with the practice in civil cases, the court shall submit to a jury any question of fact involved in the case.
>
> (e) *Disposition.*—
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> (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.

without a jury." *Id.* (citing R.P. Gilbert & R.L. Humphreys, *Maryland Workers' Compensation Handbook*, 312-14 (1988)).

On appeal to the circuit court, the Commission's decision is subject to a rebuttable presumption of correctness on matters of fact, but not of law. *Simmons v. Comfort Suite Hotels*, 185 Md. App. 203, 211 (2009). Upon appeal from a decision of the circuit court, where the question presented is one of law, an appellate court reviews the decision *de novo*, according no deference to the trial court or the Commission. *Prince George's Cty. v. Proctor*, 228 Md. App. 579, 587 (2016).

DISCUSSION

The substance of the County's argument was, and is, that Ms. Hamilton failed to establish the causal connection between her initial October 1991 injury with substantial evidence and requisite expert testimony. Initially, Ms. Hamilton contended that the present case presents no complicated medical issue, but she goes on to argue that the medical treatment over twenty-four years after the initial accidental injury is causally related because Ms. Hamilton provided several years of medical opinions, treatment, and testimony which supports the finding of the Commission and decision of the circuit court. We agree with Ms. Hamilton as to her second point.

Generally, in cases involving complicated medical questions beyond the experience of laymen, testimony by a medical expert is required to establish proof of causation. In *Wilhelm v. State Traffic Safety Commission*, 230 Md. 91, 100 (1962), the Court of Appeals provided:

> [W]here the cause of an [injury] claimed to have resulted from a negligent act[2] is a complicated medical question involving fact finding which properly falls within the province of medical experts (especially when the symptoms of the injury are purely subjective in nature, or where disability does not develop until some time after the negligent act), proof of the cause must be made by such witnesses.

Id. at 100. *See also Jewel Tea Co., Inc. v. Blamble*, 227 Md. 1, 7 (1961) (Considering a workmen's compensation claim relying upon lay testimony, the Court of Appeals provided: "[R]eliance on lay testimony alone is not justified when the medical question involved is a complicated one, involving factfinding which properly falls within the province of medical experts."). Lay testimony, by way of contradistinction, is appropriate in matters falling within common experience, knowledge, or observation. *Wilhelm*, 230 Md. at 99-100.

There is no definitive rule determining when a causal question rises to the level of complexity warranting expert medical testimony, and the judgment is to be made on a case-by-case basis. *S.B. Thomas, Inc. v. Thompson*, 114 Md. App. 357, 382-83 (1997). However, this Court has articulated a four-factor disjunctive test to assist in evaluating the issue. Specifically the Court stated:

> [T]he causal relationship will almost always be deemed a complicated medical question and expert testimony will almost always be required when one or more of the following circumstances [are] present: 1) some significant passage of time between the initial injury and the onset of the trauma; 2) the impact of the initial injury on one part of the body and manifestation of the trauma in some remote part; 3) the absence of any medical testimony; and 4) a more arcane cause-and-effect relationship that is not part of common lay experience[.]

[2] In *Kantar v. Grand Marques Café*, 169 Md. App. 275, 283 (2006), we noted that "[i]n the context of Workers' Compensation claims, we may substitute 'compensable accident' for 'negligent act' and 'disability' for 'injury.'"

Id. at 382.

Looking to the factors established in *S.B. Thomas*, *id.*, factor one comes into play; there was significant passage of time between the initial injury and the onset of the trauma requiring treatment. The initial injury occurred in October of 1991, and the treatment in dispute did not begin until March 30, 2015. The nearly twenty-four year gap between the initial injury and the treatment clearly qualifies as a significant period. Factor two is not in play, as the trauma leading to treatment is in the same general area as the initial injury. Factor three, is satisfied though the County would contend otherwise, as there is medical testimony in the record. Factor four, concerning a cause-and-effect relationship beyond common lay experience, is present as the long term effects resulting from injury to the back are beyond the common experience and knowledge of the average person. Applying these standards, we have no trouble concluding that expert medical testimony was necessary in this instance.

Having determined that the instant case involves a complex medical issue, we turn to the question of whether Ms. Hamilton met her evidentiary burden. She, as the claimant, had the burden of proof in establishing causation before the Commission. *Id.* at 363. To reiterate, the County contends the Commission's finding that Ms. Hamilton was entitled to additional medical expenses to cover the 2015 and 2016 treatment was not supported by substantial evidence in the record, and that she was required to provide expert testimony in order to establish causation. We disagree.

We note preliminarily, as the County acknowledges, that with respect to expert testimony before the Commission, documentary evidence is accepted, and perhaps

preferred. *See* COMAR 14.09.03.09(G).[3] As such, Ms. Hamilton was under no burden to have an expert appear and testify before the Commission. With that prefatory point, we proceed to consider the expert opinions entered into the record before the Commission.

The primary piece of evidence supporting Ms. Hamilton's position was a May 2010 doctor's note in which the attending physician specifically stated that, "[Ms. Hamilton] continues to have problems related to original injury/surgery with her back." The County contests the sufficiency of this note to meet the evidentiary bar, arguing that because of a subsequent gap in treatment between 2010 and 2015, and due to doctor's notes acknowledging other related issues including obesity and inactivity, that there is a tenable question as to whether the 2015 and 2016 treatment was causally related to the original injury. We are unpersuaded.

[3] The regulation reads, in relevant part:

> G. Expert Testimony.
>
> (1) If a party wishes to have an expert witness appear and testify, other than a vocational rehabilitation counselor, the party must seek prior approval from the Chairman.
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> (2) The party shall submit a letter stating *why oral testimony is necessary in lieu of documentary evidence.*
>
> (3) The party producing the expert witness shall be responsible for any fees charged by the expert for appearing and testifying.

(Emphasis added).

After Ms. Hamilton's injury, she received ongoing treatment for pain in her back. In 2000, she underwent anterior spine surgery with L3 to L5 fusion. Doctor's notes from 2010 consistently reference low back pain and degenerative issues around the surgically repaired area. In the May 2010 note, Dr. Bhatnagar noted that Ms. Hamilton "[continued] to have problems with her back similar to the problems she has had over the years . . . It is no different than the pains that she had four to five years ago . . . ." Additionally, Dr. Bhatnagar directly asserted that Ms. Hamilton's issues were related to the original injury. In the more recent 2015 and 2016 treatment, consistent with her prior care, Ms. Hamilton was evaluated for pain in her back and similar degenerative issues were noted.

These facts provide a sufficient evidentiary basis to support the conclusion that Ms. Hamilton experienced ongoing, acute difficulty with her back stemming from the 1991 injury. Based on the foregoing, and given that the 2015 and 2016 treatments concerned the same physical region, there is adequate evidence in the record to determine that a causal nexus existed between Ms. Hamilton's initial injury and the contested care. Accordingly, no additional medical testimony to that effect is needed or warranted.

The County cites several cases to support their contention and relies in significant part on this Court's decision in *Kantar v. Grand Marques Café*, 169 Md. App. 275 (2006). There, we considered the case of Ms. Inci Kantar, who sought to increase her permanent partial disability to permanent total disability after reporting a worsening in her condition following a fall in 1998. *Id.* at 278. Applying the *S.B. Thomas* test, we held that expert testimony was required, noting that Kantar provided no proof of

causation relating the worsening of her condition to her initial injury outside of her own testimony. *Id.* at 283-84.

Kantar does not provide support for the County's position. Most significantly, Ms. Kantar suffered from a number of substantial and intervening medical issues that could have accounted for the worsening of her condition, including "coronary artery bypass surgery in 2000; ongoing treatments for diabetes, hypertension, and thyroid conditions; and surgery to relieve carpal tunnel conditions." *Id.* at 278. Further, we found that Ms. Kantar offered "no proof of causation." *Id.* at 284. Here, there is an expert's opinion directly asserting that Ms. Hamilton's back issues, similar to the ones she experienced over the years, were causally related to her original injury. Further, there are no substantial medical issues that could call the causal relation into question.[4] The County has pointed to Ms. Hamilton's weight as an alternative cause, citing to a March 2015 note, but the same note includes an impression of junctional degenerative changes at L2-L3 and L5-S1, the regions embracing the portion of her back that was surgically repaired in response to her fall. To the extent that the gap between the 2010 and 2015 treatment presents an analytical hurdle, it is sufficient to note that the character of the trauma at issue here is completely consistent with her prior care. As such, the intervening period is not enough in itself to undermine the causal link.

[4] Notably, the County never availed itself of the opportunity to have Ms. Hamilton submit to another medical evaluation to substantiate its challenge to causation. *See* COMAR 14.09.03.08.

Other cases cited are similarly inapposite. In *American Airlines Corp. v. Stokes*, 120 Md. App. 350 (1998), the appellee relied on his own lay testimony and a doctor's report which evaluated his condition but did not relate his treatment to his alleged work-related injury. *Id.* at 357. We held that expert testimony would be required under the circumstances present in that case. *Id.* at 359. In *Giant Food v. Booker*, 152 Md. App. 166, 171,182 (2003), a worker sought permanent partial disability benefits but provided no expert testimony causally linking the onset of his asthma to his Freon exposure fourteen months prior; we held that an expert opinion was necessary. Then, in *S.B. Thomas* itself, we held that expert testimony would be required to evaluate whether a worker's herniated disc was causally related to a workplace injury. *S.B. Thomas*, 114 Md. App. at 385.

Each of the above cases are distinguishable from the case at bar. They all suffered from a common deficiency: there was no expert evidence in the record establishing the causal connection between the work-related harm and the contested treatment. To the contrary, in this case, there is an opinion from a presiding physician linking Ms. Hamilton's treatment nearly twenty years after the fact directly to her original 1991 injury. Ms. Hamilton's full treatment history and the nature of the contested treatment established causal relation to the initial injury. Accordingly, the circuit court did not err.

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