

Circuit Court for Harford County
Case No. 12-C-18-000255

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2419

September Term, 2018

SAMUEL A. LYONS

v.

CHESAPEAKE SPICE COMPANY, *et al.*

Meredith,
Wright,
Graeff,

JJ.

Opinion by Graeff, J.

Filed: July 27, 2020

*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.

Samuel Lyons, appellant, is a former employee of Chesapeake Spice Company (“Chesapeake Spice”), appellee. On February 8, 2011, Mr. Lyons experienced a work-related injury. After a hearing with the Maryland Workers’ Compensation Commission (“the Commission”) in April 2013, Mr. Lyons received an initial workers compensation award of 22 percent industrial loss of use of the body, “16 percent due to the accidental injury, 6 percent preexisting.”

Mr. Lyons subsequently filed a Request for Modification of the award, alleging that his disability had increased, and he sought costs for medical expenses. Appellant’s requests were denied, and on September 18, 2019, the Circuit Court for Harford County affirmed the Commission’s 2018 decision finding that appellant had not sustained any worsening of his condition that was causally related to the 2011 injury.

On appeal, appellant presents two questions for this Court’s review,¹ which we have consolidated and rephrased, as follows:

Did the Commission err in finding no worsening of condition that were causally connected to the 2011 injury?

For the reasons set forth below, we answer that question in the negative.

¹ Appellant presented the following two questions:

1. Did the Circuit Court err in upholding the Workers’ Compensation Commission’s decision denying causal connection and worsening of conditions when there was no evidence presented to reach the decision rendered?

2. Is the appellant entitled to Permanent Total Disability?

FACTUAL AND PROCEDURAL BACKGROUND

I.

Accident and Initial Claim

On February 8, 2011, while Mr. Lyons was driving a tractor trailer as an employee for Chesapeake Spice, he was in an accident. His tractor trailer hit a patch of black ice, causing Mr. Lyons to lose control of it, and the vehicle struck a sign, went through the guardrail, and slid down the embankment. Mr. Lyons sustained injuries to his left knee, left shoulder, neck, and back.²

Due to these injuries, Mr. Lyons sought medical treatment. Dr. Bill Murphy at Harford County Chiropractic, LLC, concluded that Mr. Lyons had:

[L]imited range of motion in the cervical region, with . . . pain at extreme motions; spasm in the paracervical and trapezius musculature; weakness and pain upon resistance of the left deltoid muscle; adequate strength and pain throughout resistance of the right deltoid muscle; lumbodorsal range of motions were shy of normal, with pain elicited at extreme motion; palpatory evaluation of the thoracic spinal region revealed spasm and tenderness present; examination of the left shoulder revealed tenderness with limited range of motion and pain at extreme motions; and tenderness and swelling of the inferior patella of the left knee with limited range of motion and pain experienced at full extension.

On June 3, 2011, Dr. Robert Riederman saw Mr. Lyons for an Independent Medical Evaluation (“IME”). Mr. Lyons, a 52-year-old male, complained of pain in his lower back, left knee, left shoulder, neck, as well as numbness to the left hand and left leg. Dr. Riederman stated in his report that, based on Mr. Lyon’s medical records and history, he

² Mr. Lyons never returned to his job as a truck driver.

“sustained soft tissue injuries and contusions involving his cervical spine, lumbar spine, left shoulder, and left knee” during the accident on February 8, 2011. He concluded that Mr. Lyons had reached maximum medical improvement, he could return to work, and his current subjective symptoms were not causally related to the February injury.³

On March 21, 2012, Dr. Raymond Drapkin conducted an IME of Mr. Lyons. Dr. Drapkin found that Mr. Lyons “sustained a chronic cervical strain, chronic lumbosacral strain, impingement syndrome to his left shoulder, and internal derangement [t]o his left knee.” He concluded that Mr. Lyons had reached “maximum medical improvement.”⁴

On February 14, 2011, Mr. Lyons filed a claim with the Commission. On November 26, 2012, the first of two hearings, the Commission granted Mr. Lyons temporary total disability for February 9, 2011, through December 21, 2011. Mr. Lyons did not appeal this decision.

³ In making his initial report, Dr. Riederman incorrectly relied on some medical records that were for a different Samuel Lyons, but when he was made aware of this issue, Dr. Riederman still held the same opinion. Dr. Riederman reviewed his evaluation three separate times: June 8, 2011, August 19, 2011, and May 4, 2012. He never changed his opinion.

⁴ Dr. Drapkin found that Mr. Lyons had a 21 percent permanent impairment to his cervical spine, 25 percent permanent impairment to his left shoulder, 20 percent permanent impairment to his left knee, and 26 percent permanent impairment to his lumbar spine.

The second hearing took place on April 3, 2013. It focused on the causal connection of the accident to Mr. Lyons' left hip injury and his claim of permanent partial disability.⁵

The Commissioner made the following rulings:

1. Temporary Total Disability: Paid from February 9, 2011 to December 21, 2011 inclusive; based on average weekly wage of \$859.22.
2. Causal Connection: The disability of the claimant's left hip is not causally related to the accidental injury.
3. Permanent Partial Disability: Under "other cases" amounting to 22% industrial loss of the use of the body, 16% is reasonably attributable to the accidental injury (back, left leg, neck, left shoulder, and left knee) and 6% is due to pre-existing condition (back, left leg); at a rate of \$314.00 weekly, beginning December 22, 2011, for a period of 80 weeks.

Mr. Lyons appealed to the Circuit Court for Harford County, arguing that the Commission had incorrectly relied on Chesapeake Spice's medical expert, Dr. Riederman, who reviewed records for a different Samuel Lyons when making his evaluation. The circuit court found that Dr. Riederman did rely on incorrect medical records, but after he was advised of this mistake, he held the same opinion that Mr. Lyons did not have a permanent partial disability. In any event, the court, although finding that Dr. Riederman was not credible, found that the Commission's decision was not affected by Dr. Riederman's report, and that there was "a factual basis for the Commission to reach a lower

⁵ There are four types of disability benefits: temporary partial disability ("temporary in duration and partial in extent"), temporary total disability ("temporary in duration but total in extent"), permanent partial disability ("permanent in duration and partial in extent"), and permanent total disability ("permanent in duration and total in extent"). *Phuonglan Ngo v. CVS, Inc.*, 214 Md. App. 406, 415 (2013) (quoting *Wal Mart Stores, Inc. v. Holmes*, 416 Md. 346, 353–54 n.2 (2010)), *cert. denied*, 436 Md. 502 (2014).

rating than the rating [Mr. Lyons' expert] reached." On May 16, 2014, the court issued an order affirming the Commission's decision.

II.

Procedural History Prior to This Case

On June 15, 2015, Mr. Lyons filed with the Commission a Request for Modification of his award, claiming that his injuries had worsened. On October 23, 2015, he amended this request to include his right knee, and on November 30, 2015, Mr. Lyons filed issues for payment of expenses he had incurred resulting from his injuries.

On May 20, 2016, Commissioner Godwin held a hearing on the following issues: (1) Mr. Lyons' petition to reopen the case because of worsening of the condition; (2) whether the employer or the insurer was entitled to an IME; (3) the causal connection of the treatment; (4) payment of medical expenses; and (5) the causal connection of the right knee.

At the hearing, Chesapeake Spice challenged the causal relationship and reasonableness and necessity of medical treatment. Mr. Lyons said that he had a new evaluation regarding permanent disability, but Chesapeake Spice asserted that Mr. Lyons had not voluntarily submitted to an IME for the company. Mr. Lyons responded that he had "offered a dozen times." He wanted the IME to take place in Virginia, where he lived, instead of Maryland.⁶ The Commissioner stated that she would not hear the case on

⁶ Mr. Lyons provided several letters he had sent attempting to schedule an IME with Chesapeake Spice. He stated in the letters that he required special transportation.

permanent total disability without the IME, but she would hear the other issues. Chesapeake Spice stated that they could proceed on the causal relationship issues, noting that there was nothing in the medical reports that causally related the treatment he had received to the alleged injury.

Mr. Lyons testified that his “injuries continued to get worse,” and he had six procedures on his back, surgery on both knees, and surgery on his shoulder. Mr. Lyons was seeking reimbursement for mileage and co-pays associated with these injuries. He also provided an IME conducted on May 5, 2016, by Dr. Robert Cirincione, which stated that Mr. Lyons had a total industrial loss to the body of 75 percent, and the right knee issues were causally related to Mr. Lyons’ initial accident.⁷

Chesapeake Spice pointed out that Mr. Lyons fell after the accident, which injured his left shoulder. It also asserted that Mr. Lyons had provided no evidence to indicate that the shoulder surgery, left knee surgery, or right knee surgery were related to the accident.

On June 13, 2016, Commissioner Godwin issued findings that: (1) the right knee was not causally related to the initial injury; (2) Chesapeake Spice was not liable for the co-pays and mileage on January 5 2015, and January 6, 2016, because no medical reports were submitted; and (3) the issue of reopening for worsening was “raised, but not litigated,”

Chesapeake Spice stated that it submitted documentation from the IME vendor offering transportation, and Mr. Lyons refused. Mr. Lyons claimed that was because the provided transportation was not the van he required.

⁷ Dr. Cirincione stated that Mr. Lyons had been awarded total disability by the Social Security Administration.

and it would not be litigated until Mr. Lyons attended an IME. The Commissioner's memorandum further stated:

The Commission finds on the issue of causal connection of treatment, that a review of the medical reports submitted by the claimant indicate the treatment is for thoracic and lumbar degenerative disc disease, degenerative joint disease, degenerative tear of the left knee, osteoarthritis of the left knee and left shoulder tendonitis (no tear), all of which are generally due to the aging process. The Commission finds that the claimant failed to present credible medical evidence that these current conditions are causally related to the accident. The Commission finds that the treatment rendered in 2015 and 2016 is not casually connected to the accidental injury.

On June 16, 2016, Mr. Lyons filed with the Commission issues raising the nature and extent of his disability. On October 18, 2016, Commissioner Maureen Quinn held a hearing. Mr. Lyons offered the same medical records that he did before Commissioner Godwin. Commissioner Quinn found that Mr. Lyons had "sustained no increase in permanent partial disability" since his April 3, 2013, award.

Mr. Lyons filed an on-the-record appeal of Commissioner Quinn's decision to the Circuit Court for Harford County. Chesapeake Spice filed a Motion for Summary Judgment.

On August 17, 2017, the circuit court denied Mr. Lyons' appeal and granted Chesapeake Spice's Motion for Summary Judgment. The court found that,

[b]ecause Commissioner Godwin ultimately ruled there was insufficient evidence of the injuries causal relationship to the injury, thus precluding recovery on the issue, the matter brought before Commissioner Quinn on the same theory was basically identical in the evidence it lacked and therefore time barred as a matter of law[.]

The court recommended that, if Mr. Lyons wanted to continue to pursue a claim to modify his permanent partial disability due to a worsening condition, he should seek legal representation.

III.

Procedural History for This Appeal

On December 14, 2017, Mr. Lyons again filed issues with the Commission. He raised issues related to the nature and extent of permanent disability and Chesapeake Spice's refusal to schedule an IME.

On January 3, 2018, Commissioner Godwin held a hearing. At the hearing, Mr. Lyons claimed permanent disability for the neck, back, left knee, right knee, and left shoulder. Chesapeake Spice contended that, at the hearing in October 2016, before Commissioner Quinn, worsening of condition was litigated. Mr. Lyons agreed that he received no treatment between 2013 and 2015, and it had already been determined that the treatment from 2015 and 2016 was not casually connected to the accident, so Commissioner Quinn found that Mr. Lyons had not sustained any worsening of condition. Chesapeake Spice advised that the circuit court had dismissed the appeal relating to that ruling.

Chesapeake Spice argued that Mr. Lyons had now filed again for worsening of condition, but Mr. Lyons had not provided any new medical records. Chesapeake Spice no longer wanted an IME based on the Commission's prior ruling determining that medical treatment through May 2016 was not casually connected to the incident.

Mr. Lyons stated that he had received an IME from Dr. Cirincione, which said that Mr. Lyons' right knee injuries were causally related to the accident. Mr. Lyons stated that his symptoms had gotten worse. He subsequently admitted, however, that there were no new medical records that were not submitted to the Commission prior to the June 2016 decision.

On January 22, 2018, Commissioner Godwin issued an order denying Mr. Lyons' Petition to Reopen. The order stated that Mr. Lyons had "not sustained any worsening which [was] causally related to the accident on February 8, 2011."

On January 29, 2018, Mr. Lyons appealed this decision to the Circuit Court for Harford County. On August 30, 2018, the court held a hearing. At the hearing, Mr. Lyons asked the court to reverse the Commission's decision because he felt "it was arbitrary and capricious." He also asserted that Chesapeake Spice did not present any evidence or provide him the opportunity to comply with its request for an IME. Chesapeake Spice responded that, because the Commission already had "determined the treatment he got in 2015 is not related, and he didn't have any treatment between 2013 and 2015," there was no need for an IME. Chesapeake Spice also contended that the circuit court had previously dismissed the appeal from the prior conclusion that there was no causally related worsening of condition and granted summary judgment for Chesapeake Spice. Mr. Lyons presented no new evidence.

On September 17, 2018, the court issued a memorandum opinion affirming the Commission's decision. The court noted that, at the 2018 hearing, Mr. Lyons presented the same medical reports as he did at the May 2016 hearings and the 2017 hearing.

The court noted that Mr. Lyons did not appeal Commissioner Godwin's 2016 decision that there was no causation associated with his right knee and that the treatment for his spine and left knee and shoulder was not causally related to the 2011 accident. Appellant, therefore, had not preserved the argument that an IME from the employer was necessary to reach that conclusion. The court ultimately held that Mr. Lyons' claim was barred by *res judicata*, collateral estoppel, and the law of the case doctrine.

This appeal followed.

STANDARD OF REVIEW

Judicial review of an administrative decision "generally is a 'narrow and highly deferential inquiry.'" *Seminary Galleria, LLC v. Dulaney Valley Improvement Ass'n*, 192 Md. App. 719, 733 (2010) (quoting *Md.-Nat'l Park & Planning Comm'n v. Greater Baden-Aquasco Citizens Ass'n*, 412 Md. 73, 83 (2009)). This Court looks "through the circuit court's decision and evaluates the decision of the agency," *Chesapeake Bay Found., Inc. v. Clickner*, 192 Md. App. 172, 181 (2010), "determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law." *Cosby v. Dep't of Human Res.*, 425 Md. 629, 638 (2012) (quoting *Bd. of Phys. Quality*

Assurance v. Banks, 354 Md. 59, 67–68 (1999)).

With respect to the agency’s factual findings, we apply the substantial evidence test, which “requires us to affirm an agency decision, if, after reviewing the evidence in a light most favorable to the agency, we find a reasoning mind reasonably could have reached the factual conclusion the agency reached.” *Miller v. City of Annapolis Historic Pres. Comm’n*, 200 Md. App. 612, 632 (2011) (quoting *Montgomery County v. Longo*, 187 Md. App. 25, 49, *cert. denied*, 411 Md. 357 (2009)). *Accord Comm’r of Labor and Indus. v. Bethlehem Steel Corp.*, 344 Md. 17, 24 (1996). In applying the substantial evidence test, this Court “may not substitute its judgment on the question whether the inference drawn is the right one or whether a different inference would be better supported. The test is reasonableness, not rightness.” *Alviani v. Dixon*, 365 Md. 95, 108 (2001) (quoting *Mayor and Aldermen of City of Annapolis v. Annapolis Waterfront Co.*, 284 Md. 383, 399 (1979)).

When reviewing an agency’s conclusions of law, we “must determine whether the agency interpreted and applied the correct principles of law governing the case and no deference is given to a decision based solely on an error of law.” *Bd. of Dental Exam’rs v. Tabb*, 199 Md. App. 352, 373 (2011) (quoting *Solomon v. Bd. of Phys. Quality Assurance*, 155 Md. App. 687, 696–97 (2003), *cert. denied*, 381 Md. 676 (2004)). Although a “certain amount of deference may be afforded when the agency is interpreting or applying the statute the agency itself administers,” *Emps’ Ret. Sys. of City of Balt. v. Dorsey*, 430 Md. 100, 111 (2013), “[w]e are under no constraint . . . ‘to affirm an agency decision premised solely upon an erroneous conclusion of law,’” *Thomas v. State Ret. &*

Pension Sys. of Maryland, 420 Md. 45, 54–55 (2011) (quoting *Ins. Comm’r v. Engelman*, 345 Md. 402, 411 (1997)). Thus, we review legal conclusions *de novo* for correctness. *Colburn v. Dep’t of Pub. Safety & Corr. Servs*, 403 Md. 115, 127–28 (2008) (quoting *Schwartz v. Md. Dep’t of Nat’l Res.*, 385 Md. 534, 554 (2005)) (“[I]t is always within our prerogative to determine whether an agency’s conclusions of law are correct, and to remedy them if wrong.”).

As long as an administrative decision does not exceed the agency’s authority, is not unlawful, and is supported by competent, material and substantial evidence, a reviewing court may not reverse or modify the decision unless the action was “so extreme and egregious” as to render it “arbitrary and capricious.” *Harvey v. Marshall*, 389 Md. 243, 300 (2005) (emphasis omitted) (quoting *Md. Transp. Authority v. King*, 369 Md. 274, 291 (2002)). If the agency’s actions are “reasonably or rationally motivated,” this Court will not reverse the decision as “arbitrary or capricious.” *Id.* at 299.

For an on-the-record review, such as this one, “no new evidence is taken nor is any fresh fact-finding engaged in. The determination of whether the decision of the Commission was free from error will entail only an examination of the record of the proceedings before the Commission.” *Bd. of Ed. for Montgomery Cty. v. Spradlin*, 161 Md. App. 155, 170 (2005).

DISCUSSION

Mr. Lyons contends that the Commission erred in finding no causal connection between his accident and his current condition when Chesapeake Spice did not submit an

IME challenging his claim. Chesapeake Spice contends that, based on the evidence, including Mr. Lyons' treating physician's determination that the treatment after 2011 was not the result of the 2011 injury, the Commission properly found that there was no worsening of Mr. Lyons' disability. Moreover, Chesapeake Spice asserts that Mr. Lyons' claim is barred by the law of the case doctrine and collateral estoppel. We agree with Chesapeake Spice that the claim is barred by the doctrine of collateral estoppel.

In Maryland, the doctrine of collateral estoppel has four elements:

1. Was the issue decided in the prior adjudication identical with the one presented in the action in question?
2. Was there a final judgment on the merits?
3. Was the party against whom the plea is asserted a party or in privity with a party to the prior adjudication?
4. Was the party against whom the plea is asserted given a fair opportunity to be heard on the issue?

Cosby v. Dep't of Human Res., 425 Md. 629, 639 (2012) (quoting *Colandrea v. Wilde Lake Cmty. Ass'n*, 361 Md. 371, 391 (2000)).

Here, each element of the four-part test is met. With respect to the first element, the issue presented here, whether there was a causal connection between the 2011 accident and Mr. Lyons' current condition, is the same claim rejected on prior occasions. Initially, the May 2016 Commission proceeding ended with Commissioner Godwin's finding that Mr. Lyons failed to show that the treatment he received in 2015 and 2016 was causally connected to the accidental injury. This finding was based on Commissioner Godwin's conclusion that the medical records presented showed that the problems Mr. Lyons was

experiencing were “generally due to the aging process.” Mr. Lyons again filed issues challenging the nature and extent of his disability, and on October 20, 2016, after a hearing where no new evidence was offered, Commissioner Quinn found that Mr. Lyons had not shown any increase in permanent partial disability, a finding that the circuit court affirmed. On January 22, 2018, in the context of these two previous rulings, and no new evidence, Commissioner Godwin again addressed the same issues and found that Mr. Lyons had “not sustained any worsening which [was] causally related to the accident on February 8, 2011.” Thus, the first element of the doctrine of collateral estoppel has been satisfied.

With respect to the other elements, there was a final judgment on the merits—a grant of summary judgment by the circuit court after the July 2017 hearing. *See Stuples v. Balt. City Police Dep’t*, 119 Md. App. 221, 242, *cert. denied*, 349 Md. 495 (1998) (“[W]hen a circuit court sits in an appellate capacity to review a decision of an administrative agency . . . that action by the circuit court is now deemed to be an appealable final order.”). Moreover, the parties in the hearings were the same, so the privity prong is satisfied. Finally, Mr. Lyons had a fair opportunity to be heard on the issues. Each time that he filed issues with the Commission, he had a hearing, he had the opportunity to present evidence, and he chose to provide the same evidence for every hearing. Accordingly, all the elements for a claim to be barred by collateral estoppel are applicable here. Commissioner Godwin properly denied Mr. Lyons’ 2018 claim, and the circuit court properly affirmed this ruling.

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