Circuit Court for Montgomery County
Case No. C-15-CV-22-000142

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1946

September Term, 2022

IN THE MATTER OF
STACY SCOTT-MCKINNEY

Graeff,
Ripken,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Ripken, J.

Filed: January 11, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This appeal stems from a workers' compensation claim filed by Appellant, Dr. Stacy Scott-McKinny ("Dr. Scott-McKinney") for an occupational disease she sustained arising out of her employment as a pediatrician. After Dr. Scott-McKinney's claim was denied by the Maryland Workers' Compensation Commission ("Commission"), she appealed to the Circuit Court for Montgomery County. Appellee, Children's National Medical Center ("Children's National") and its insurer filed a motion for summary judgment which the circuit court granted on the basis that Dr Scott-McKinney's claim was untimely. Dr. Scott-McKinney noted this timely appeal and presents the following issue for our review:[1] Whether the circuit court erred in granting Children's National's motion for summary judgment on the grounds that Dr. Scott-McKinney's claim was untimely. For the reasons to follow, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Dr. Scott-McKinney is a board-certified pediatrician who has worked at Children's National since 2007. Dr. Scott-McKinney's duties as a pediatrician include "see[ing] pediatric patients from birth through 21, examining [and] documenting electronic health records, prescribing medications, doing referrals, reviewing specialist reports, doing school forms, writing letters to schools [and] talking to specialists regarding patients." According

[1] Rephrased from:

> Whether the circuit court erred by granting Appellee's motion for summary judgment when there were numerous genuine disputes of material fact, including whether Dr. Scott-McKinney suffered from an occupational disease of her right hand in 2017, whether she suffered disablement from any such occupational disease, and whether she had actual knowledge of any such disablement.

to Dr. Scott-McKinney, "90 percent" of her job involves charting her patients' medical records in an "EMR,"[2] which is all computer-based work.

Dr. Scott-McKinney first noticed numbness in her right hand while typing at work in the fall of 2016. The numbness then became painful in February of 2017. Dr. Scott-McKinney initially sought treatment for her right-sided neck pain, as well as right-sided shoulder and arm pain in March of 2017. At that time, Dr. Scott-McKinney described that her symptoms started "with some coldness in her hand and some numbness in her right index finger" which "progresse[d] to pain more proximally, including on the right side of her neck and shoulder." She felt that "these [were] discrete areas of pain." In April of 2017, Dr. Scott-McKinney's pain began to worsen. She reported that the "[p]ain radiates from the shoulder to the right index finger and up into the neck." Dr. Scott-McKinney explained that her symptoms "gradually . . . seemed to merge together." In May of 2017, Dr. Scott-McKinney was evaluated again for neck and right upper extremity pain. Later that same year, she again sought medical treatment for chronic neck pain and right arm pain.

Dr. Scott-McKinney's medical records indicate she was diagnosed with the following conditions in 2017: combination of cervical spondylosis and thoracic outlet syndrome; cervical radiculopathy; neck pain; right upper extremity radiculopathy; and chronic cervicalgia.

As a result of her medical conditions, Dr. Scott-McKinney made ergonomic

[2] "EMR" refers to an electronic medical record system. Similarly, "EHR" refers to electronic health records. These terms are used interchangeably in the medical profession.

modifications to her workspace.[3] She began using a laptop cart so she could stand while charting medical records and she also utilized a tablet with touch-screen capabilities. In August of 2017, Dr. Scott-McKinney reported to her treating physician that these changes were providing "minimal benefit" and she felt that she would "need to pursue a scribe for her charting."[4]

On October 4, 2017, Dr. Scott-McKinney filed a claim ("2017 claim") with the Commission, alleging that her right shoulder and neck were injured resulting from her medical charting. The claim was based on her diagnoses of "right rotator cuff tendinitis and cervical radiculopathy." It is undisputed that Dr. Scott-McKinney's symptoms that supported these diagnoses included numbness of her right second and third fingers, tingling/coldness in her right hand, as well as right side neck and shoulder pain. Dr. Scott-McKinney reported to her treating physician at that time that she believed her symptoms were "related to work."

Dr. Scott-McKinney hired a scribe in July of 2018 to assist her with medical charting. Despite relying on the scribe, Dr. Scott-McKinney continued to experience neck

[3] While the record does not indicate the specific date on which Dr. Scott-McKinney made these ergonomic changes to her workstation, it is clear from her medical records that the changes first occurred in 2017, prior to an office visit with her treating physician on August 29, 2017. To be sure, Dr. Scott-McKinney's medical records from an office visit on April 11, 2017 indicate that "she . . . had ergonomic experts look at her workstation" and by August 29, 2017, the changes, including using a laptop cart and a touch-screen tablet, had been implemented.

[4] A scribe is "essentially a personal assistant" to a physician who gathers and documents patient information into EMRs. *See* What is a Medical Scribe? ScribeAmerica, https://www.scribeamerica.com/what-is-a-medical-scribe/ (last visited Jan. 8, 2024).

pain, right arm and hand pain that progressed through the workday, and a "tingling cold sensation" in her right arm. Ultimately, Dr. Scott-McKinney reduced her work hours.[5]

In March of 2019, Dr. Scott-McKinney was evaluated again for right arm and hand pain and coldness. She was diagnosed with non-radicular right hand coldness and she was referred to another physician for a second opinion. Later that month, Dr. Scott-McKinney sought a second opinion as recommended and was diagnosed with "right hand Raynaud's phenomenon." The medical records indicated that the right hand issue "seems to be associated with work and using her hands especially using the EMR system when she makes notes." In August of 2020, Dr. Scott-McKinney sought treatment with another physician, who noted that "[h]er symptoms start within 30 minutes of being on the computer" and diagnosed her with "repetitive strain pain."

Dr. Scott-McKinney filed a second claim with the Commission on September 10, 2020 ("2020 claim"). The claim alleged that her right hand was injured by "repetitive overuse strain . . . from repetitive charting." On December 21, 2020, a hearing was held before the Commission on Dr. Scott-McKinney's 2020 claim. The purpose of the hearing was to determine whether Dr. Scott-McKinney sustained an occupational disease arising out of and in the course of her employment. Dr. Scott-McKinney testified on cross-examination as follows:

> [COUNSEL]: So, [Dr. Scott-McKinney], you admit that your pain and/or -- not pain but your numbness and tingling in your hand started back in 2017; is that right?

[5] It is not clear based on the record when Dr. Scott-McKinney began the reduction of work hours. Medical records indicate that her treating physician recommend she limit her work hours in October of 2020.

[DR. SCOTT-MCKINNEY]: Yes. The second and third finger only.

[COUNSEL]: And it would occur while you were at work and while you were typing; is that correct?

[DR. SCOTT-MCKINNEY]: Yes.

[COUNSEL]: And did it occur anywhere else or any other parts of your life where this happened, or was it just at work while you were typing?

[DR. SCOTT-MCKINNEY]: No, it was primarily at work.

[COUNSEL]: Primarily while you were charting and doing the electronic medical records; is that correct?

[DR. SCOTT-MCKINNEY]: Yes.

[COUNSEL]: And, in fact, when you went to see a doctor about this in 2017, it was -- you were able to reproduce this tingling and numbness while working on a computer; do you recall that?

[DR. SCOTT-MCKINNEY]: Yes.

[COUNSEL]: And back in 2017, you knew that this was related to your job, correct [be]cause that's the only place –

[DR. SCOTT-MCKINNEY]: . . . Back in 2017 Dr. Levin was treating me for cervical radiculopathy, which can affect those fingers.

[COUNSEL]: Yeah. I wasn't asking you what Dr. Levin was treating you for in 2017. My question was you were aware back in 2017 that this tingling and numbness in your fingers and your hand and the coldness was related to your job; is that correct?

[DR. SCOTT-MCKINNEY]: Yes.

The Commission subsequently issued an order disallowing Dr. Scott-McKinney's 2020 claim, determining that she did not sustain an occupational disease arising out and in the course of employment. Dr. Scott-McKinney filed a petition for judicial review of the Commission's decision and Children's National and its insurer filed a motion for summary

judgment. A hearing was held on the motion for summary judgment, which the circuit court granted. The court determined that Dr. Scott-McKinney "had actual knowledge of her disablement more than two years before . . . filing" her claim and the claim was "filed outside of the statute of limitations pursuant to § 9-711 of the Labor and Employment Article of the Maryland Annotated Code."

Additional facts will be included as they become relevant to the issues.

DISCUSSION

A. Standard of Review

In an appeal from judicial review of an administrative agency, this Court "looks through" the decision of the circuit court and reviews the agency's decision directly. *Matter of Homick*, 256 Md. App. 297, 307 (2022); *see also Bd. of Educ. of Harford Cnty. v. Sanders*, 250 Md. App. 85, 93 (2021). "Notably, we give considerable weight to the agency's interpretation and application of the statute which the agency administers." *Sanders*, 250 Md. App. at 92 (citation omitted). We further "afford the Commission a degree of deference, as appropriate, in its formal interpretations of the Workers' Compensation Act." *Montgomery Cnty v. Deibler*, 423 Md. 54, 60 (2011). However, "we may always determine whether the administrative agency made an error of law." *Sanders*, 250 Md. App. at 93 (citation omitted).

We review a trial court's grant of summary judgment for legal error, and thus our review is *de novo*. *See, id.* at 94; *see also Dashiell v. Meeks*, 396 Md. 149, 163 (2006). Maryland Rule 2-501 provides that a court shall grant summary judgment only if "there is no genuine dispute as to any material fact and . . . the party in whose favor judgment is

entered is entitled to judgment as a matter of law." Md. Rule 2-501(f). "We are obligated to conduct an independent review of the record to determine if there is a genuine dispute of material fact." *Sanders*, 250 Md. App. at 94; *see also Injured Workers' Ins. Fund v. Orient Express Delivery Serv., Inc.*, 190 Md. App. 438, 450–51 (2010).

B. Statute of Limitations

The parties agree that the timeliness of Dr. Scott-McKinney's claim is governed by the Maryland Workers' Compensation Act (the "Act"), codified in Title 9 of the Labor and Employment Article ("LE"). LE section 9-711 provides, "[i]f a covered employee suffers a disablement . . . as a result of an occupational disease, the covered employee . . . shall file a claim application form with the Commission within 2 years . . . after the date: (i) of disablement . . . ; or (ii) when the covered employee . . . first had actual knowledge that the disablement was caused by the employment." LE § 9-711(a). In occupational disease cases, the "claim period begins running . . . the moment at which in most instances the claimant ought to know he has a compensable claim[.]" *Lowery v. McCormick Asbestos Co.*, 300 Md. 28, 39–40 (1984). "[A] grant of summary judgment is appropriate if the statute of limitations governing the action has expired." *Choice Hotels Int'l., Inc. v. Manor Care of America, Inc.*, 143 Md. App. 393, 397 (citing *Frederick Road Ltd. P'ship v. Brown & Sturm*, 360 Md. 76, 93 (2000)).

C. Parties' Contentions

Dr. Scott-McKinney asserts that the circuit court improperly granted Children's National's motion for summary judgment on the basis that she "had actual knowledge of her disablement more than two years before filing the Complaint at issue." According to

Dr. Scott-McKinney, there were numerous genuine disputes of material fact, including: (1) whether Dr. Scott-McKinney suffered from an occupational disease in her right hand in 2017; (2) whether the symptoms Dr. Scott-McKinney experienced in her right hand in 2017 amounted to "disablement" under the Act; and (3) whether Dr. Scott-McKinney had actual knowledge of her disablement from a right hand occupational disease.

To the contrary, Children's National contends that Dr. Scott-McKinney's occupational disease claim was untimely because she had actual knowledge that the disablement of her right hand was caused by her employment more than two years prior to filing her claim. Therefore, Children's National argues that Dr. Scott-McKinney's occupational disease claim related to her right hand was untimely and was properly disallowed by the Commission and the circuit court.

D. Analysis

1. Dr. Scott-McKinney suffered disablement related to her right hand condition more than two years prior to filing her occupational disease claim.

LE section 9-101 defines "occupational disease" as "a disease contracted by a covered employee: (1) as the result of and in the course of employment; and (2) that causes the covered employee to become temporarily or permanently, partially or totally incapacitated." LE § 9-101(g). "Disablement" is defined as "the event of a covered employee becoming partially or totally incapacitated: (1) because of an occupational disease; and (2) from performing the work of the covered employee . . . ." LE § 9-502(a). "Disablement has been held to be the equivalent of incapacitation." *Mayor and City Council of Balt. v. Schwing*, 351 Md. 178, 181 (1998) (citing *Helinski v. C&P Telephone*

Co., 108 Md. App. 461, 471 (1996)).

An occupational disease is "an event which is statutorily treated much like an injury caused by an accident." *CES Card Establishment Services, Inc. v. Doub*, 104. Md. App. 301, 315 (1995) (quoting *Shifflet v. Powhattan Mining Co*., 293 Md. 198, 202 (1982)). Maryland Courts have determined that "an employee is not incapacitated within the intent of the law 'if, though injured [the employee] still has the capacity, the ability to, and does continue to perform his [or her] regular work for which he [or she] is employed[.]" *Doub*, 104 Md. App. at 315–16. Incapacitation frequently includes "many factors from which the fact finder determines (in the case of partial incapacitation) whether the claimant is 'less capable of working' than he or she had been previously." *Id*. at 316 (quoting *Miller v. Western Elec. Co.*, 310 Md. 173, 193 (1987)). In other words, whether a disablement is occupational depends, at least partially, "upon how the occupation is defined and how much of the range of activity fairly included within the occupation is in fact foreclosed to the claimant." *Helinski*, 108 Md. App. at 161.

Here, both parties rely on this Court's decision in *Smith v. Howard County* in support of their contentions, but for different reasons. 177 Md. App. 327 (2007). In *Smith*, this Court considered whether the claimant was incapacitated under the Act. *Id*. at 333. The claimant, a police officer assigned to the patrol unit, alleged that he suffered an occupational disease as a result of "injuries to his hips and knees from continuously entering and exiting his patrol vehicle over a 26-year period." *Id.* at 330. The Court determined that "[t]he question is whether [the claimant] was partially incapacitated from performing the duties of a patrol officer" as of the start date of his alleged disablement. *Id*.

at 333–34. The Court held that the claimant did not demonstrate that he was incapacitated from performing his duties as a patrol officer because even if he "'was having more difficulty getting in and out of the car without the pain,' no evidence demonstrates that he avoided such activity—partially or completely." *Id.* at 336. The Court further reiterated that "it has been said that an employee is not incapacitated within the intent of the law 'if . . . though injured [the employee] still has the capacity, the ability to, and does continue to perform his [or her] regular work, for which he [or she] was employed . . . .'" *Id*. (citing *Belschner v. Anchor Post Products, Inc.*, 227 Md. 89, 93 (1961)).

Dr. Scott-McKinney asserts that the *Smith* Court's ruling supports her contention that "a claimant can have symptoms, but they do not constitute a compensable occupational disease under the Act until they affect her work." Conversely, Children's National argues that under *Smith*, "incapacitation considerations turn on whether a claimant avoids certain activities associated with his or her employment duties."

The parties both further rely on *CES Card Establishment Services, Inc. v. Doub* in support of their respective positions. 104 Md. App. 301 (1995). The claimant in *Doub*, an input/output clerk, filed an occupational disease claim with the Commission alleging that she developed carpal tunnel syndrome resulting from her employment. *Id*. at 304–05. This Court analyzed the term "disablement" under the Act and ultimately determined that the claimant was not "'disabled,' within the meaning of the term provided in LE § 9-502(a)." *Id*. at 314–18. The Court concluded that the claimant was not "any less capable of performing her work as an input/output clerk" after the date of her alleged disablement. *Id*. at 318. The Court, in explaining its ruling, emphasized that there was "nothing in the record

tending to show that the amount of work assigned to [the claimant] was diminished . . . that she was producing less work because of the problems, . . . or that she was impaired from using her right hand." *Id*.

Dr. Scott-McKinney contends that her case is analogous to *Doub* because Children's National did not present any evidence in its motion for summary judgment that Dr. Scott-McKinney's right hand symptoms interfered with her ability "to perform [her] regular work . . . and receive[] [her] usual pay." *Id*. at 315–16. However, while we note that the *Doub* opinion does contain this phrase which Dr. Scott-McKinney relies on, it is part of the Court's review of the legal definitions of "disability" and "incapacitation," and not part of its holding.[6] *Id*. at 314–16. Children's National, on the other hand, emphasizes that the *Doub* opinion stands for the proposition that to find incapacitation, we must consider whether the claimant is "less capable at work by examining whether her workload is diminished or whether she is impaired from using the injured body part while performing her work."

We are more persuaded by Children's National's, rather than Dr. Scott-McKinney's, analysis and application of *Smith* and *Doub*. Unlike *Smith*, where there was no evidence to

[6] To be sure, the *Doub* Court, quoting *Belschner v. Anchor Post Products, Inc.*, 227 Md. 89, 93 (1961) stated the following: "the [Supreme Court of Maryland] elaborated on the meaning of the phrase 'actual incapacitation'" . . . :

> While the words "actually incapacitated" are not defined in the statute, obviously because they are neither ambiguous nor equivocal and import no technical meaning, it has been said that an employee is not incapacitated within the intent of the law, "if, though injured, [he] still has the capacity, the ability to, and does continue to perform his regular work, for which he is employed, and receives his usual pay for the work."

104 Md. App. at 315–16.

indicate that the claimant could not perform the duties of a patrol officer or that he avoided getting in and out of his patrol car, here, there is undisputed evidence that Dr. Scott-McKinney began making changes to the manner in which she performed her work in 2017. *See* 177 Md. App. at 336. Moreover, in contrast to *Doub*, there is evidence in the record that Dr. Scott-McKinney was "less capable of performing her work" and that she was "impaired from using her right hand" beginning in 2017. *See* 104 Md. App. at 318. It is undisputed from Dr. Scott-McKinney's medical records that she began implementing ergonomic changes to her workstation in 2017, including using a laptop cart and a touch-screen tablet. She also hired a scribe in 2018 to assist her with medical charting, which clearly demonstrates that Dr. Scott-McKinney was "less capable of performing her work" and at least partially incapacitated from performing her work. *See Smith*, 177 Md. App. at 333, 336; *Doub*, 104 Md. App. at 318. Indeed, these modifications to her work effectively reduced the amount of time that Dr. Scott-McKinney was using her right hand for medical charting, which was "90 percent" of her job.

Based on our independent review of the record, we conclude that it is undisputed that Dr. Scott-McKinney suffered disablement related to her right hand condition beginning in 2017 and peaking in July of 2018 when she hired a scribe, which was more than two years prior to filing her September 10, 2020 claim.

2. Dr. Scott-McKinney had actual knowledge that her disablement was caused by her employment more than two years prior to filing her occupational disease claim.

LE section 9-711 "acts as a bar to a claim if a covered employee does not file his or her claim with the Commission within two years after the date 'when the covered employee

. . . first had actual knowledge that the disablement was caused by the employment.'" *Lombardi v. Montgomery County*, 108 Md. App. 695, 707 (1996) (quoting LE § 9-711(a)). In other words, the limitations period for occupational disease claims under the statute "runs, at the earliest, from the date of disablement, not from the date of the onset of the occupational disease." *Mayor and City Council of Balt. v. Schwing*, 116 Md. App. 404, 418 (1997). Moreover, this Court has "recognized that it is the date of disablement, and not the date of diagnosis, on which the administration of the [statute] depends." *Doub*, 104 Md. App. at 310 (citing *James v. General Motors Corp.* 74 Md. App. 479, 486 (1988).

The parties direct our attention to the same cases but advance different interpretations of the actual knowledge requirement of LE section 9-711(a). We begin our analysis with *Lombardi*, wherein this Court addressed the question of what constitutes "actual knowledge" with respect to filing occupational disease claims with the Commission. 108 Md. App. at 709. In *Lombardi*, the claimant was employed as a firefighter and paramedic until he retired in 1988 because of an unrelated back injury. *Id*. at 699–700. Upon his retirement, claimant underwent an exit physical examination, which did not reveal any elevated blood pressure. *Id*. at 700. Later that year during a routine visit with his primary care physician, Lombardi was diagnosed with hypertension. *Id*. In 1991, after a discussion with his attorney, Lombardi realized that there could be a connection between his hypertension and his former occupation. *Id*. Lombardi's belief was substantiated when an examining physician confirmed that his condition stemmed from his work as a firefighter. *Id*. at 699–700. Thereafter, Lombardi filed a workers' compensation claim. *Id*. at 700.

The Commission disallowed Lombardi's claim, finding that, among other reasons, it was barred by the two-year statute of limitations. *Id*. On appeal, the circuit court granted employers' motion for summary judgment, finding that the limitations period began to run when Lombardi was first diagnosed with hypertension, which was more than two years prior to the time his claim was filed. *Id*. at 701. At the summary judgment stage, Lombardi presented "sworn testimony [from] the Commission, in which he stated that he did not know that his hypertension related to his former employment until he was so informed by [his physician]" in 1991 and a corroborating report from that physician. *Id*. at 713. On appeal to this Court, we held that summary judgment was improper because reasonable minds could differ as to when Lombardi had the requisite knowledge that his hypertension was related to his work as a firefighter. *Id*. at 710, 713. The Court noted that a reasonable fact finder could have determined that Lombardi was not aware of his occupational disease claim until 1991, when his examining physician told him there was a connection between his hypertension and his former employment. *Id*. at 710.

Dr. Scott-McKinney also relies on *Consolidation Coal Co. v. Dugan*, 198 Md. 331 (1951), which was decided under the pre-1951 version of the workers' compensation statute. In *Dugan*, the Supreme Court of Maryland held that the claimant was "justified in relying upon the diagnosis [of silicosis] of his physician" when he filed an occupational disease claim. 198 Md. at 336. Prior to 1951, compensation for an occupational disease was limited to the occupational diseases specifically listed in the statute. *Id*. at 333. The claimant was examined after he stopped working and was diagnosed with asthmatic bronchitis, which was not listed in the pre-1951 Act as a compensable occupational disease.

Id. at 332–33. A subsequent x-ray examination revealed that the claimant had silicosis, or sand dust in the lungs, which was a compensable occupational disease. *Id*. The Court reasoned that because silicosis "can be diagnosed only by a physician[,]" the claimant did not know or have reason to know that he had a compensable occupational disease until his physician's diagnosis. *Id*. at 336. As such, the claimant did not know that there was a causal connection between his disability and his occupation. *Id*. at 335–36.

Children's National asserts that the issues in this case are akin to those in *Mutual Chemical Co. of America v. Pinckney*, which was decided under the current version of the Act. 205 Md. 107 (1954). In that case, it was undisputed that Pinckney, who was employed as a laborer, knew at the time of his discharge in 1948, that he had a nose injury which was caused from inhaling chemical fumes at his workplace. *Id*. at 111, 115–16. However, Pinckney was not aware of the extent of his injury until 1951, when he was diagnosed with a perforated septum, which prompted him to file a claim with the Commission. *Id*. at 110–11. The Supreme Court of Maryland determined that when Pinckney was discharged by his employer, "he knew or should have known that his disability, whether permanent or temporary, was compensable." *Id*. at 116. Thus, the Court held that Pinckney's claim was time barred because he knew both that he was having health problems and of its connection to his work three years prior to filing his claim. *Id*. at 116–17.

Neither *Lombardi* nor *Dugan* support Dr. Scott-McKinney's contentions. The claimant in *Lombardi* did not realize that there was a connection between his hypertension and former occupation until he was later informed by his physician. 108 Md. App. at 713. In *Dugan*, the claimant did not know or have reason to know that he had an occupational

disease or that there was a connection between his disablement and his employment until the diagnosis from his physician. 198 Md. at 336. In contrast to these cases, here, Dr. Scott-McKinney expressly testified that her right hand issues began in 2017 and were related to her work as a pediatrician. Moreover, like the claimant in *Pinckney*, Dr. Scott-McKinney admitted that she was aware her right hand issues that began in 2017 were related to her occupation as a pediatrician.

We conclude that the circuit court properly barred Dr. Scott-McKinney's claim as untimely because there is no genuine dispute that she had actual knowledge in 2017 that her right hand condition was caused by her employment, which was more than two years before she filed her claim with the Commission. Accordingly, the circuit court's grant of summary judgment was proper.

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