UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2170

September Term, 2015

CHARLES ARVIN

v.

LOCKHEED MARTIN CORPORATION

Wright,
Graeff,
Bair, Gary E.,
(Specially Assigned),

JJ.

Opinion by Bair, Gary E., J.

Filed: March 17, 2017

The instant appeal arises from an accidental injury claim filed by appellant, Charles Arvin, against appellee, his former employer, Lockheed Martin Corporation ("Lockheed Martin"). On April 14, 2014, appellant filed an accidental injury claim with the Maryland Workers' Compensation Commission ("Commission") alleging that appellant sustained an accidental injury when he experienced a worsening of a pre-existing anxiety disorder due to workplace stressors. On July 9, 2014, the Commission found that appellant did not sustain an accidental injury. On September 3, 2014, appellant filed a petition for judicial review in the Circuit Court for Frederick County. On September 9, 2015, after a hearing, the circuit court granted appellee's motion for summary judgment.

Before this Court, appellant presents two questions for review, which we have consolidated into one question:[1]

> Did the circuit court err in ruling that appellant could not maintain a *prima facie* claim for accidental injury?

For the following reasons, we shall affirm the ruling of the circuit court granting appellee's motion for summary judgment.

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[1] Appellant presents two issues in his brief, as follows:

1. Whether [appellant] presented sufficient facts to support a prima faci[e] claim of an accidental injury[.]

2. Whether [the] trial court err[ ]ed in granting [Lockheed Martin's] motion for summary judgment as disputed issues existed regarding asserted accidental injury[.]

BACKGROUND

Appellant was employed by appellee for thirty-four years as a hardware and software engineer. In late 2011, appellant was asked to participate in the closing down of one of appellee's labs in Clarksburg, Maryland. During this time, appellee implemented changes in its billing procedures and also asked that appellant perform tasks that fell outside of his work description. From November 2011 to June 2012, while assisting in the closing down of appellee's lab, appellant was exposed to chemicals. Notably, on February 12, 2012, appellant was exposed to electrolytes when he opened a battery cell. Prior to this incident, appellant did not have experience working with hazardous chemicals.

In May 2012, appellant was the last person left monitoring the shut down of the lab. Appellant wrote the software for the final test and was in charge of concluding the test. Appellant was asked by appellee to perform numerous other tasks despite being in charge of only one project. In his testimony before the Commission, appellant voiced that during this time, his anxiety "really went crazy."

As a result, appellant experienced stress that aggravated a pre-existing anxiety disorder.[2] The first documented complaints occurred on February 20, 2012, when appellant visited Dr. James Roessler. On his medical intake form, appellant indicated he had a past medical history of anxiety and allergies, and that at the time of the visit, he was

[2] In his brief, appellant argued he also developed a chronic coughing condition but this claim was withdrawn at oral argument.

experiencing seasonal sore throat, chronic cough, itching eyes, post nasal drip, runny nose, sinus infections, and headaches. He was diagnosed with an upper respiratory infection.

As a result of his worsening anxiety and coughing condition, appellant initially filed a claim on October 4, 2012, with the Commission alleging that he sustained an occupational disease. The Commission found that appellant did not sustain an occupational disease. Appellant then appealed the Commission's Order to the Circuit Court for Frederick County but voluntarily dismissed the appeal shortly before trial. On April 14, 2014, appellant filed the instant claim with the Commission alleging an accidental injury that occurred on June 27, 2012. The description of the injury states, "[Appellant was] asked to perform multiple tasks unusual in nature on multiple dates from 11/2011 to 06/2012[.] Onset symptoms commenced due to chemical[ ] exposures and stres[sors] from improper billing instructions inducing aggrava[ ]tion of previously chronic anxiety." On July 9, 2014, the Commission found that appellant did not sustain an accidental injury arising out of and in the course of employment and denied a request for re-hearing on July 21, 2014.

On September 3, 2014, appellant filed a petition for judicial review in the Circuit Court for Frederick County in which he noted he would be pursuing a claim for accidental injury only. On August 17, 2015, appellee filed a motion for summary judgment, and subsequently, appellant filed a response to the appellee's motion. On August 25, 2015, appellee filed a Motion in Limine to Preclude the Testimony of

Claimant's Proposed Expert Witnesses, Motion in Limine to Preclude Evidence Relating to Claimant's Alleged Anxiety and/or Stress Disorder, and Motion in Limine to Preclude Claimant's Proposed Fact Witnesses and Related Evidence.

On September 9, 2015, a hearing was held on appellee's motion for summary judgment and the motions in limine. The circuit court granted appellee's motion for summary judgment, Motion in Limine to Preclude Evidence Relating to Claimant's Alleged Anxiety and/or Stress Disorder, and Motion in Limine to Preclude Claimant's Proposed Fact Witnesses and Related Evidence. The circuit court did not rule on appellee's Motion in Limine to Preclude the Testimony of Claimant's Proposed Expert Witnesses. On November 9, 2015, appellant filed a timely notice of appeal.

STANDARD OF REVIEW

The Court of Appeals has stated that the standard of review for a trial court's grant or denial of a motion for summary judgment,

> is a question of law subject to *de novo* review on appeal. *Livesay v. Baltimore*, 384 Md. 1, 9, 862 A.2d 33, 38 (2004). In reviewing a grant of summary judgment under Md. Rule 2-501, [appellate courts] independently review the record to determine whether the parties properly generated a dispute of material fact and, if not, whether the moving party is entitled to judgment as a matter of law. *Id.* at 9-10, 862 A.2d at 38. [Appellate courts] review the record in the light most favorable to the nonmoving party and construe any reasonable inferences that may be drawn from the facts against the moving party. *Id.* at 10, 862 A.2d at 38.

Myers v. Kayhoe, 391 Md. 188, 203 (2006).

DISCUSSION

On appeal, appellant argues that he presented sufficient facts to support a *prima facie* claim for accidental injury. Appellant contends that despite having a pre-existing anxiety disorder, the anxiety and stress that he experienced from November 2011 to June 2012, due to workplace stressors, constitute a compensable accidental injury. Appellant argues that he did not experience debilitating anxiety until he was subjected to improper billing demands, exposure to chemicals, and exposure to the improper removal of asbestos. The workplace stressors weighed so heavily on him that his ability to function in the workplace began to deteriorate in November 2011 and progressively worsened until June 2012. Appellant maintains that the worsening of his pre-existing anxiety disorder is a compensable injury.

Appellant also argues that he should have been permitted to present evidence of alternative theories of compensability, specifically, accidental injury and occupational disease. Appellant contends that his injuries are compensable as an occupational disease because he was exposed to hazardous and stressful workplace conditions over an extended period of time. In his brief, appellant states, "[T]he degree of exposure to chemicals without safeguards and proper training were outside of Mr. Arvin's typical duties and would be sufficient to be deemed an accident . . . It is entirely reasonable to suggest that due to the prolonged exposure to hazardous chemicals the onset and illnesses are an occupational disease." Appellant contends that the facts of this case should have been evaluated under both theories.

In response, appellee argues that appellant's claim relating to his alleged anxiety disorder is not properly before this Court. Appellee contends that appellant did not appeal the circuit court's decision to grant appellee's Motion in Limine to Preclude Evidence Relating to Claimant's Alleged Anxiety and/or Stress Disorder. Appellee responds that appellant did not cite any legal or factual basis for reversing the circuit court's decision. Given that appellant did not present this issue on appeal, this Court should not consider the circuit court's decision to grant the motion in limine.

Furthermore, appellee argues that appellant's claim that his anxiety disorder constitutes a compensable accidental injury fails for substantive reasons. Appellee contends that appellant has not established a *prima facie* case for accidental injury because appellant has not demonstrated that his anxiety and/or stress disorder resulted from an unexpected and unforeseen event. Appellee maintains that a mental injury must be precipitated by an accident that occurs suddenly and violently. Appellee argues that appellant's condition worsened over time as a result of a series of events that occurred from November 2011 to June 2012, which is the type of claim barred by Maryland case law.

Regarding appellant's claim that he should have been permitted to present evidence of alternative theories of compensability, appellee argues that appellant's "hybrid theory" is an attempt to muddle the distinction between accidental injury and occupational disease claims. Appellee contends there is no legal basis for proceeding on a hybrid claim of compensability because both claims are distinct under Maryland law.

Appellant maintains that this appeal should be limited to the issue of whether appellant sustained an accidental injury arising out of and in the course of his employment.

Pursuant to the Workers' Compensation Act, Md. Code (1991, 2008 Repl. Vol.), § 9-101 of the Labor and Employment Article ("LE"), "accidental personal injury" means:

> (1) an accidental injury that arises out of and in the course of employment; (2) an injury caused by a willful or negligent act of a third person directed against a covered employee in the course of the employment of the covered employee; or (3) a disease or infection that naturally results from an accidental injury that arises out of and in the course of employment, including: (i) an occupational disease; and (ii) frostbite or sunstroke caused by a weather condition.

The Workers' Compensation Act does not define the word "accident," but for purposes of the statute, appellate courts define "accident" as an "unforeseen and unplanned event or circumstance," *Burr v. Maryland State Retirement and Pension System*, 217 Md. App. 196, 205 (2014), "some physical event that takes place that precipitates harm," *see id.* at 207, and "an unexpected and unforeseen event that occurs suddenly or violently," *see Belcher v. T. Rowe Price Foundation, Inc.*, 329 Md. 709, 740 (1993). An injury is not required to have resulted from "unusual activity" to be covered as an accidental injury. *Harris v. Bd. of Educ. of Howard Cty.*, 375 Md. 21, 30-31 (2003).

"Workers' compensation claims based on mental injuries caused by mental stimuli have been coined 'mental-mental' claims, in contrast to 'physical-mental'[3] and 'mental-

[3] Physical-mental claims arise when a mental injury is caused by physical impact. *See Means*, 344 Md. at 674 n.3.

physical'[4] claims." *Means v. Baltimore County*, 344 Md. 661, 667 (1997). The Court of Appeals has recognized mental-mental claims to be compensable in the context of accidental injury. *See Belcher*, 329 Md. at 745. Generally, a work-related mental disability may be compensable as an accidental personal injury if the mental state for which recovery is sought is capable of objective determination. *Id.* at 745-46. However, "a mere showing that a mental injury was related to *general conditions* of employment, or to incidents occurring over an extended period of time, is not enough to entitle the claimant to compensation." *Id.* at 739-40 (quoting *Sparks v. Tulane Med. Ctr. Hosp. & Clinic*, 546 So. 2d 138, 147 (1989)). "The mental injury must be precipitated by an accident, i.e., an unexpected and unforeseen event that occurs suddenly or violently." *Id.* at 740 (quoting *Sparks*, 546 So. 2d at 147).

As an initial matter, we agree with appellee that appellant's anxiety claim is not properly before this Court. The trial court granted appellee's Motion in Limine to Preclude Evidence Relating to Claimant's Alleged Anxiety and/or Stress Disorder. The trial judge stated, "[T]he Claimant is now trying to, uh, get the denied occupational claim into this accidental injury [ ] case. The Court will reject that effort." Given that the trial judge made a final judgment on this issue, appellant should have raised on appeal the issue of whether the trial judge erred in granting appellee's motion in limine. Appellant did not do so and therefore the anxiety claim is not properly before this Court.

[4] Mental-physical claims arise when a physical injury is caused by a mental stimulus. *See Means*, 344 Md. at 674 n.4.

Regardless, we will address the merits of appellant's argument regarding his anxiety claim. Appellant argues the requirement in *Belcher* that a mental injury be precipitated by a sudden and unexpected event was abolished in *Harris v. Board of Education of Howard County*. 375 Md. 21 (2003). Appellant concedes that there needs to be "some type of incident[,]" but the incident can arise over a period of time. In the context of this case, appellant argues his condition worsened from November 2011 to June 2012 due to the unusual tasks given to him by appellee, the changes in appellee's billing demands and workplace policies, and his exposure to hazardous chemicals. Appellant argues that the continuum of events that occurred during this period created the type of incident envisioned by the Court of Appeals in *Harris*.

We do not agree with appellant's contention and find a discussion of *Harris* and *Belcher* is instructive. In *Belcher*, the appellant "suffered sleep disturbances, nightmares, heart palpitations, chest pain, and headaches" after a three-ton beam hoisted by a construction crane broke loose and crashed through the roof of her workplace, landing five feet from where she sat. 329 Md. at 713. The appellant sought treatment for her mental injuries but not her physical injuries. *Id.* at 715. The Commission found that the appellant did not sustain an accidental personal injury. *Id.* Following an appeal to the circuit court, the trial judge granted the employer's motion for summary judgment. *Id.* at 716. The Court of Appeals reversed the judgment of the circuit court and remanded the case to the Commission. *Id.* at 746.

The Court of Appeals in *Belcher* held that a mental injury may be compensable as

an accidental injury "if the mental state for which recovery is sought is capable of objective determination." *Id.* at 745-46. The Court of Appeals turned to tort law to come to its conclusion. *Id.* at 722-36. Specifically, the Court traced the development of both negligence law and actions arising from the tort of intentional infliction of emotional distress to confirm that a mental injury can in fact be compensable. *Id.* The Court explained,

> We have traced the development of the law of Maryland as interpreted in our judicial opinions concerned with liability for negligently inflicted mental harm, from a standard limiting such liability to purely physical trauma to a standard permitting recovery for damages for trauma resulting from purely emotional distress that can be objectively determined. The recognition that a person should be compensated for mental harm resulting from the negligent act of another is in accord with the ever increasing knowledge in the specialties which have evolved in the field of medicine and in the disciplines of psychiatry and psychology. Persons suffering from severe mental distress are no longer simply warehoused in Bedlam type institutions; they are treated by medical experts at no small costs. We are now aware that mental injuries can be as real as broken bones and may result in even greater disabilities.

Id. at 735-36. The Court cautioned, however, "that the mental injury must be precipitated by an accident, *i.e.*, a sudden and unforeseen event that occurs suddenly or violently," and that "damages resulting from harm psychological in nature may be obtained, independent of physiological harm, provided the cause and effect of psychological harm are established." *Id.* at 734, 739-40.

Conversely, in *Harris*, the Court of Appeals dealt with accidental injury in the context of physical injury. In *Harris*, the appellant was employed by the appellee as a

food and nutritional service assistant at a high school. 375 Md. at 24-25. On the day she suffered the injury, the appellant opened a forty-five pound box of laundry detergent to find that it was infested with cockroaches. *Id.* at 25-26. The appellant and her assistant dragged the box out of the laundry room and out of a side door. *Id.* at 26. The appellant bent down to scoop some soap detergent, and then bent down a second time to tie up the bag of soap powder. *Id.* At that point, her back "cracked" and she was unable to stand upright. *Id.* The Commission found that the appellant suffered an accidental injury. *Id.* The appellee appealed the Commission's finding and the case proceeded to trial. *Id.* at 26-27. The trial court denied the appellant's motion for judgment that her claim was compensable under Maryland law on the ground that there was contradictory evidence regarding whether the injury arose out of "unusual activity." *Id.* at 27. The jury returned a verdict in favor of the appellee. *Id.*

The Court of Appeals in *Harris* held that an injury is not required to have resulted from "unusual activity" to be a compensable accidental injury under the Workers' Compensation Act. *Id.* at 36, 51. In so holding, the *Harris* Court overruled a line of cases that held an accidental injury must arise from "unusual activity." *Id.* at 59 (overruling *Slacum v. Jolley*, 153 Md. 343 (1927), *Miskowiak v. Bethlehem Steel Co.*, 156 Md. 690 (1929), and *Atlantic Coast Shipping Co. v. Stasiak*, 158 Md. 349 (1930)). The *Harris* Court explained that "what must be unexpected, unintended, or unusual is the resulting injury and *not* the activity out of which the injury arises." *Harris*, 375 Md. at 36. The Court of Appeals therefore reversed the judgment of the trial court and affirmed the

decision of the Commission. *Id.* at 59.

In the instant case, appellee argues that *Harris* does not control the disposition of this case, but rather that *Belcher* does. We agree and find *Harris* distinguishable in two significant ways. First, the Court in *Harris* spoke only to the requirement that an accidental personal injury be precipitated by an "unusual activity." *Id.* at 36, 51. In departing from this requirement, the Court overruled several cases that previously held an accidental injury must be caused by an "unusual activity." *Id.* at 59. The Court had the opportunity to overrule, or address, its general proposition in *Belcher, i.e.*, that to be compensable, a mental injury must be precipitated by an "unexpected and unforeseen event that occurs suddenly or violently." The Court of Appeals did not do so.

Second, it appears that *Harris* addressed only accidental injury claims in the context of physical injuries. The appellant in *Harris* suffered a back injury. *Id.* at 26. In fact, the line of cases overruled by *Harris* also involve physical injuries. *See Slacum v. Jolley*, 153 Md. 343 (1927) (heat stroke); *Miskowiak v. Bethlehem Steel Co.*, 156 Md. 690 (1929) (heat stroke); *Atlantic Coast Shipping Co. et al. v. Stasiak*, 158 Md. 349 (1930) (hernia). Just ten years prior to *Harris*, the Court ruled for the first that a mental injury may qualify as a compensable accidental injury, *see Belcher*, 329 Md. at 745-46, and relied on tort law to address the compensability of mental injuries. *Belcher*, 329 Md. at 722. The instant case involves a mental injury and is therefore treated differently in the context of accidental injury.

We now turn to the facts of the case at bar. Unlike the appellant in *Belcher*, who

suffered mental injuries after a three-ton steel beam crashed through her workplace roof and landed five feet from where she sat, appellant has not experienced a sudden or unexpected incident that would reasonably lead to a mental injury. Contrary to his argument that the workplace stressors over a seven-month period led to an accidental mental injury, the record does not suggest that his mental injury was accidental or that it resulted from an accident in the workplace. There is no support in Maryland case law that the type of alleged workplace stressors appellant experienced are compensable. Therefore, under *Belcher*, appellant did not suffer a compensable accidental injury, and it was not error for the trial judge to conclude that appellant could not maintain a *prima facie* case for accidental injury.

Finally, we do not find persuasive appellant's argument that he should have been permitted to present alternative theories of compensability at the Commission level. It is significant that appellant initially pursued his claim as an occupational disease but voluntarily dismissed that claim prior to trial. He then re-filed his claim with the Commission as an accidental injury. When the Commission denied the accidental injury claim, appellant appealed to the circuit court and indicated in his petition for judicial review that he would be going forward on a theory of accidental injury only. At the hearing on the motion for summary judgment, appellant's counsel stated, "This case has consistently been pled in alternative theories, occupational disease, and accidental injury, both of which are a result of aggravating a pre-existing stress condition, uh. And, and I – that's what this case is about. And we are asking this jury to take a look at those issues,

and decide whether it concurs with the Commission, or not." For all intents and purposes, appellant had at all times in the instant case pursued a theory of accidental injury. He filed for accidental injury at the Commission level, was heard on the accidental injury claim at the Commission level, and appealed to the circuit court on a theory of accidental injury. It was not error for the trial judge to disallow any claim for occupational disease.

For the above reasons, we conclude that the trial court did not err in finding that appellant could not maintain a *prima facie* claim for accidental injury. Accordingly, the decision of the trial court granting summary judgment in favor of appellee is affirmed.

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