Circuit Court for Prince George's County
Case No. CAL 18-38284

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0030

September Term, 2020

BRUCE ELLIOTT

v.

PRINCE GEORGE'S
COUNTY, MARYLAND

Berger,
Gould,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Gould, J.

Filed: February 16, 2021

Appellant Bruce Elliott was a police officer with Prince George's County, Maryland (the "County") for twenty years. He retired in 1992. Approximately nineteen years later, Mr. Elliot was diagnosed with hypertension. The diagnosis prompted him to file a claim with the Workers' Compensation Commission (the "Commission"), pursuant to Section 9-503(b) of the Labor and Employment Article ("LE") of the Maryland Annotated Code (1991, 2016 Repl. Vol.), for workers' compensation benefits.

On September 19, 2018, a hearing was held before the Commission. The Commission found that Mr. Elliott's hypertension was compensable.

The County appealed to the Circuit Court for Prince George's County by filing a Petition for Judicial Review De Novo.

The trial was set for February 3, 2020. The parties agreed to a bench trial. At the beginning of the proceeding, the trial judge informed counsel that she had received the parties' request to review the video depositions of the parties' respective experts, and that she had reviewed the depositions as requested.

The County's expert was Dr. Ross Steven Myerson, "an expert in environmental and occupational medicine in the field of epidemiology and the study of causes of diseases in the general population." Dr. Myerson opined that Mr. Elliott's hypertension was not causally related to his work as a police officer but instead the result of his risk factors for hypertension, specifically that he was over the age of 60, had "obstructive sleep apnea," was overweight, had gastroesophageal reflux disease (GERD), and had a family history of heart disease. The Commission did not have Dr. Myerson's testimony before it when it made its decision.

Mr. Elliott's expert was Dr. Richard Schwartz, a cardiologist. Dr. Schwartz's testimony was that Mr. Elliott's age, family history, and weight were not risk factors, and that his hypertension was causally related to his work as a police officer.

The trial court acknowledged that the hearing was supposed to be a de novo bench trial, and specifically asked the parties' counsel how they wished to proceed. Mr. Elliot's counsel indicated that he was prepared to proceed to argument based on the depositions. In the ensuing discussion leading up to the trial judge's announcement of her decision, the County's attorney acknowledged the County's burden of proof and argued that Dr. Myerson's testimony established that Mr. Elliot's hypertension was not causally related to his employment as a police officer.

Mr. Elliot's counsel focused his argument on the two presumptions that worked in Mr. Elliot's favor, discussed below. Mr. Elliot's counsel emphasized that "the burden is on the party seeking to overturn the decision" of the Commission, and argued that Mr. Myerson's deposition testimony was not enough for the County to meet its burden.

At the conclusion of the hearing, the trial court explained in detail why it found Dr. Myerson to be more persuasive than Dr. Schwartz. The trial court stated that although the County was unable to rebut the statutory presumption of causation when the matter was before the Commission, the County had succeeded in meeting its burden on the strength of Dr. Myerson's deposition testimony. After announcing its decision, the trial court admitted into evidence, with no objection, the two depositions.

On February 6, 2020, the trial court entered a written order memorializing its decision.

Mr. Elliot filed a timely notice of appeal. Finding no error, we affirm.

DISCUSSION

Before addressing Mr. Elliot's specific questions on appeal, we will start with the basics. "Ordinarily, the burden is on the claimant to show that he/she comes within the provisions of the occupational disease statute—that the claimant suffers from an occupational disease that was incurred in his/her employment." *City of Frederick v. Shankle*, 367 Md. 5, 8 (2001) (citations omitted). Police officers suffering from a heart disease or hypertension enjoy a rebuttable presumption that the disease "was suffered in the line of duty and is compensable" if it results in a "partial or total disability or death." *Id*. at 9 (quoting LE § 9-503(b)). The presumption of compensability "may be rebutted by evidence that a particular claimant's [hypertension] was *not* the result of job stress." *Id*. at 13. In other words, once the claimant establishes that he is suffering from either hypertension or heart disease, the claimant's prima facie case of compensability can rest solely on that presumption, and the burdens of both production and persuasion to show otherwise lie with the employer. *Id.* at 12-13.

If the claimant prevails before the Commission and the employer files a de novo appeal,[1] the claimant continues to enjoy the presumption of compensability. *S.B. Thomas,*

[1] There are two types of appeals: on the record and de novo. *S.B. Thomas, Inc. v. Thompson*, 114 Md. App. 357, 364 (1997). In an appeal on the record, the circuit court must determine "whether the Commission has 'justly considered all of the facts concerning the injury,'" whether the Commission exceeded its powers, and whether the Commission "misconstrued the law and the facts applicable in the case decided." *Id*. at 365. Conversely, in a de novo appeal, "the decision of the Commission is presumed to be prima facie correct" and "the party challenging the decision has the burden of proof. *Id.*

114 Md. App. at 366. The claimant also enjoys the added presumption that the Commission's decision was correct. LE § 9-745(b).[2] The presumption of correctness applies to issues involving disputed facts, which are resolved by the factfinder. *S.B. Thomas*, 114 Md. App. at 367. The factfinder could be the court or, if requested, the jury. *Id*. at 364; *Stine v. Montgomery Cnty.*, 237 Md. App. 374, 381 (2018). That presumption, however, does not apply to questions of law. *Moore v. Clarke*, 171 Md. 39, 45 (1936). Issues that turn on undisputed facts are considered questions of law. *Id*. at 46; *see also Whitehead v. Safway Steel Products, Inc.*, 304 Md. 67, 74 (1985).

When the claimant wins before the Commission and the employer takes a de novo appeal, the presumption of correctness that attaches to the Commission's decision insulates the claimant from losing the case on a motion summary judgment or a motion for judgment. *S.B. Thomas*, 114 Md. App. at 367. In that situation, the employer carries the burden of persuading the fact finder by a preponderance of the evidence that the claimant's injury is not compensable. *Id*.

A leading authority on workers' compensation law in Maryland described the parties' respective burdens as follows:

> When the issue is a question of fact, the burden of proof is on the appellant. The court, or, if requested by any party, a jury, decides questions of fact. The appellant may rely on the same evidence, additional evidence, or less

[2] LE § 9-745(b) provides:

In each court proceeding under this title:

(i) the decision of the Commission is presumed to be prima facie correct; and
(ii) the party challenging the decision has the burden of proof.

> evidence than that which was presented to the Commission, but the appellant has the burden of producing at least some evidence. Evidence of changes in the claimant's condition subsequent to the Commission hearing may be presented to the fact finder. The court or jury is free to substitute its own opinion for that of the Commission if they are convinced that the Commission was in error. However, if the court or jury is unsure, then the Commission decision should be affirmed.

CLIFFORD B. SOBIN, MARYLAND WORKERS' COMPENSATION § 22.2 (2018-2019 ed. 2018) (internal footnotes omitted).

With the foregoing legal framework in mind, we turn now to the specific questions presented by Mr. Elliot.

QUESTION NO. 1

Did the Circuit Court err in failing to conduct a trial and instead granting summary judgment in favor of the employer/self-insurer?

The trial court did not grant summary judgment. Summary judgment may be granted only when the material facts are not disputed, and the moving party is entitled to judgment as a matter of law. *See* Md. Rule 2-501(a). The County neither moved for summary judgment nor asserted that the material facts were undisputed. To the contrary, the County acknowledged the competing positions of the parties' experts on the causation issue, and argued that it sustained its burden of proof on the strength of Dr. Myerson's testimony. Likewise, the trial court noted the conflicting testimony of the parties' experts and found Dr. Myerson's testimony more compelling. Nothing about the process followed by the parties and the trial court resembled a summary judgment proceeding.

When the parties came before the court on February 3, the trial court specifically noted that they were there for a de novo bench trial, and asked the parties how they wished

to proceed. Mr. Elliot's counsel could have spoken up and asked the court to formally commence the trial and demanded that the County put on its case. Of course, that would have been silly because the County's case consisted of Dr. Myerson's deposition, which the trial court had already reviewed. So, Mr. Elliot's counsel instead responded by telling the court: "Your honor, I have argument." Which makes sense, because neither party had any additional evidence to put on. Counsel for the parties then argued their respective positions based on the evidence before the court—the two expert depositions—in the context of the two presumptions in Mr. Elliot's favor. Not only did Mr. Elliot not object to the process employed by the court, but it was a process that he both wanted and expected the court to follow.

QUESTION NO. 2

Did the Circuit Court fail to apply the presumption of correctness of the Workers' Compensation Commission's order as provided under LE § 9-745?

The circuit court did not fail to apply the presumption of correctness. In asserting otherwise, Mr. Elliot takes selected comments made by the court in the context of its discussion with counsel about the parties' respective burdens. There is no question that when it came time to decide the case, the court appreciated that the County had the burden of proving that Mr. Elliot's hypertension was not caused by his service as a police officer.

In its verbal ruling, the court discussed specific aspects of the parties' competing experts' testimony and explained why the court was persuaded by the County's expert, Dr. Myerson. The court concluded its discussion with a finding that the County "has rebutted the presumption of a diagnosis of occupational disease of hypertension." And, in its written

order entered several days later, the court observed that "the party challenging the decision [of the Commission] has the burden of proof" and concluded with its finding that "the County has rebutted the presumption that [Mr. Elliot] suffered an occupational disease during the course of his employment as a law enforcement officer."

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

The correction notice(s) for this opinion(s) can be found here:

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/0030a20cn.pdf