Circuit Court for Somerset County
Case No. C-19-CV-20-000082

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 221

September Term, 2021

BRENT SHARP

v.

STATE OF MARYLAND, ET AL.

Fader, C.J.,
Wells,
Woodward, Patrick, L.,
(Senior Judge, Specially Assigned),
JJ.

Opinion by Woodward, J.

Filed: April 13, 2022

This appeal has its genesis in a workers' compensation claim filed by Brent Sharp, appellant, against the State of Maryland ("Employer") and the Injured Workers' Insurance Fund ("Insurer"), appellees. On December 13, 2019, Sharp filed a claim with the Workers' Compensation Commission ("Commission") alleging that he sustained an occupational disease, specifically post-traumatic stress disorder ("PTSD"), arising out of and in the course of his employment as a correctional officer, with August 19, 2017, as the date of his disablement. After a hearing on May 8, 2020, the Commission determined that Sharp's claim was barred by the two-year statute of limitations. Sharp filed a request for a rehearing, which was denied. Sharp then filed a petition for judicial review in the Circuit Court for Somerset County. Appellees and Sharp filed cross-motions for summary judgment. After a hearing on March 19, 2021, the circuit court denied Sharp's motion and granted summary judgment in favor of appellees. On March 26, 2021, Sharp filed a motion to alter or amend the judgment, which was denied without a hearing on April 14, 2021.

Sharp presents two issues in this appeal, which we have reordered to facilitate our discussion:

> I. Whether the Circuit Court erred in granting [a]ppellee[s'] Cross-Motion for Summary Judgment finding that [Sharp]'s claim was time-barred, despite [Sharp] not being diagnosed with the occupational disease of PTSD until two years after his resignation from employment.
>
> II. Whether the Circuit Court erred in denying the Motion to Alter or Amend when the Circuit Court used the wrong standard of review when granting the [a]ppellee's Cross-Motion for Summary Judgment[.]

For the reasons that follow, we hold that the circuit court did not err in entering summary judgment in favor of appellees. As a result, Sharp's issue II is moot.

FACTUAL AND PROCEDURAL BACKGROUND

Sharp was employed by the State of Maryland as a correctional officer at the Eastern Correctional Institution ("ECI") from February 2010 through August 19, 2017. During that time, he had issues with stress, anxiety, and depression. He was placed on medication and, from 2010 through 2014, he saw Lei Gong, M.D. for anxiety and stress. On October 25, 2010, Sharp was first seen by Dr. Gong for "possible anxiety or stress[.]" Dr. Gong noted, among other things, that Sharp had worked at the prison as a correctional officer "for the last 8 months[,]" that "for the past 3-4 months" he had "been having nausea," that he had headaches, frequent urination, trouble sleeping, and that his appetite "fluctuates." Sharp reported that he liked his job, "but there are parts [he] doesn't like[,]" and that he did not "like the fact which [sic] he is moved from one area to another." He also reported that he had "money problems."

On June 6, 2013, Sharp saw Dr. Gong. Under "History of Present Illness," Dr. Gong wrote:

> **Patient words:** Here for check up, **stressed out**, Dad diagnosed with lung cancer[.] [W]ellbutrin worked great for quitting smoking and cut back on drinking. **It didn't do anything for anxiety. [N]eed something for anxiety. Don't want Prozac.** Had left over from vacation towards the end and was taking 2 per day for 2 week[s] and it still didn't work.

(Emphasis added.) Dr. Gong's "Assessment & Plan" listed "Anxiety state NOS" with an onset date of October 25, 2010.

Sharp was again seen by Dr. Gong on March 7, 2014. Under "History of Present Illness," Dr. Gong wrote: "Patient words: refill rx and note for work need [W]ellbutrin refill. *[N]eed to have a weekend off due to stress.* [W]ellbutrin work well for him. [D]own

to 5-6 cigarettes per day." (Emphasis added.) Dr. Gong noted that Sharp had started taking Zoloft on February 24, 2014.

On August 5, 2017, Sharp submitted his resignation from employment at ECI effective August 19, 2017. In his resignation notice he wrote, in relevant part:

> **My reasons for leaving are my mental health and safety concerns. Upon my hire on 2-17-10, the high stress was almost immediate and by years end I was placed on anxiety medications and no job that has that effect is healthy. Another contribution to the stress is being drafted at least a dozen times this year, the lack of sleep between stress and drafts doesn't help**, but the roster is full is the only concern of the administration it seems, not our health or family lives. It's dangerous to have tired, angry officers here for 8+ hours and unable to maintain a family life outside because you never know when the next draft is coming. My last draft I was number 25 on the list and drafted first. I'm not even sure how that's possible, but it happened. So with officers[']' health and safety not a priority as much as recreation time and inmate programs, I formally resign 8-19-17.

(Emphasis added.)

After resigning, Sharp and his wife traveled in a motor home because Sharp "thought that that would be like therapeutic[.]" He worked for a total of about four months at two campgrounds, but those jobs did not "work out" because of his anger. After some more travel, Sharp "didn't get any better as far as the irritability and all that, memory issues, anxiety[,]" and he felt that there was "still something wrong." He returned to Maryland and started seeing a therapist.

On March 4, 2019, Sharp saw, for the first time, Rhonda Bavis, LCSW-C, a licensed clinical social worker at the Worcester County Health Department. The progress note summary prepared by Bavis identified Sharp's "active problem" as "PTSD (post-traumatic stress disorder)[.]" Sharp was seen by Bavis on March 18, April 8, May 16, May 23, May

30, and June 20, 2019. PTSD was listed as the "active problem" for each of those sessions. At the April 8th appointment, Sharp reported that anger "has been an issue for him as long as he can remember – It started well before he began working at the prison."

On June 7, 2019, Sharp was seen by Deborah Gootee, CRNP-PMH, at the Worcester County Health Department, who assessed his condition as PTSD. Gootee's "Patient Encounter Summary" identified Sharp's chief complaints, in pertinent part, as follows:

> Chief Complaint: Initial Psychiatric Evaluation: "can't be around people". **Reports onset of anxiety since working at Eastern Correctional for past 8-9 years. Relates exposure to violence daily during tenure on job.** No history of inpatient or previous outpatient treatment. . . . **Current symptoms include: moderate-to-severe anxiety with panic episodes (black-outs, dizziness, falls down – most recently 2016 at work)**; nightmares, social avoidance, depression. Sleeps only 3-4 hours nightly; decreased energy, concentration, appetite. Moderate irritability "all the time"; easily angered. . . . Mild paranoia described as "always on guard" ; … worked at ECI for 8 years[.]

(Emphasis added.)

On July 10, 2019, Sharp had an evaluation by Dr. Gong at the Atlantic General Health System, "to reestablish care[.]" Dr. Gong noted that Sharp's chief complaints included:

> **Worked at ECI, had meltdown from work.** Has shoulder injuries. **Anxiety, depression, PTSD . . . Had a breakdown in 8/2017. Have PTSD, anxiety and depression from prison** and shoulder damage from prison. Have workman's comp case. Wants to see psychiatrist.

(Emphasis added.)

From July 26, 2019 through November 5, 2019, Sharp was seen by Bryce Blanton, M.D. for PTSD. On July 26, 2019, Dr. Blanton indicated that Sharp's chief complaint was, "I need help with my PTSD." Details of the chief complaint were listed as:

> Mr. Sharp is a 42yo Cm w/ a history of PTSD, depression who presents for initial evaluation. He has been seeing therapist Rhonda Bavis, LCSW, ... **Reports symptoms of PTSD ongoing since 2010[.]**

(Emphasis added.)

In a letter dated December 9, 2019, Dr. Blanton notified Sharp's attorney that it was his opinion "within a reasonable degree of medical certainty, that Mr. Sharp developed PTSD due to traumatic experiences during his career as a law enforcement officer. He has been unable to work due to the severity of his symptoms. I have recommended both psychiatric medications and therapy to treat his PTSD."

A. Workers' Compensation Commission

On December 13, 2019, Sharp filed a claim with the Commission alleging that he sustained an occupational disease of PTSD arising out of and in the course of his employment at ECI, with August 19, 2017, as the date of his disablement. The Employer and Insurer contested the claim. On May 8, 2020, a hearing was held before the Commission on the issue of whether Sharp's claim was barred by the applicable statute of limitations. Section 9-711(a)(1) of the Labor and Employment Article of the Maryland Code ("LE") provides:

> (a)(1) **If a covered employee suffers a disablement or death as a result of an occupational disease, the covered employee** or the dependents of the covered employee **shall file a claim application form with the Commission within 2 years**, or in the case of pulmonary dust disease within 3 years, **after the date**:
>
> (i) of disablement or death; or
>
> (ii) **when the covered employee or the dependents of the covered employee first had actual knowledge that the disablement was caused by the employment.**

(Emphasis added.)

Sharp acknowledged at the hearing that while working at ECI, he had issues with anxiety and depression and that he was placed on medication. He testified that he was first diagnosed with PTSD in March 2019, that he had never been told prior to that date that he had PTSD related to his work, and that, prior to the time that he was diagnosed, he had never missed work because of PTSD. Sharp stated that he was not aware that he had PTSD at the time that he resigned from ECI.

On cross-examination, when asked if on July 26, 2019, he reported to the Atlantic Health Center that he had symptoms of PTSD ongoing since 2010, Sharp testified that he "had anxiety and depression" and that PTSD "was never brought up." When asked how his symptoms were different between 2010 to 2012 and going forward to May 8, 2020, he stated that his irritability and memory loss had worsened over time. Sharp acknowledged that he had stress in August 2017, but stated that he "didn't know that it was P.T.S.D. at the time because [he] didn't know anything about it." The following colloquy occurred:

> [COUNSEL FOR EMPLOYER]: Would it be fair to say that the symptoms you were having in August 2017 were essentially the same symptoms you related to the doctor who then diagnosed you with a P.T.S.D.?
>
> [SHARP]: In 2010 when they diagnosed me with the anxiety and depression I would say, no, the symptoms weren't the same because back then it was just the anxiety of not feeling safe by 2017.
>
> I did not feel safe going into that place at all and that's when the memory problems really started, back probably two years maybe.
>
> I can't even really do a timeline as far as when it really started, but it was a little bit before I resigned.
>
> [COUNSEL FOR EMPLOYER]: Okay. And would it be fair to say that you were also having – are you having anger issues at this point?
>
> [SHARP]: Yeah. Irritability, yes.

* * *

> [COUNSEL FOR EMPLOYER]: Okay. You testified on direct that you resigned from the prison in August of 2017, correct?
>
> [SHARP]: Yes.
>
> [COUNSEL FOR EMPLOYER]: And you've also reviewed the handwritten matter of record that you yourself wrote and signed on August 5th of 2017, correct?
>
> [SHARP]: Yes.
>
> [COUNSEL FOR EMPLOYER]: **So would it be fair to say that the stress and anxiety and other factors like that lead [sic] you to resign from the prison at that time?**
>
> [SHARP]: **Yes.**

(Emphasis added.)

Counsel for Sharp asserted that his claim was not barred by the statute of limitations because the limitations period would not have started to run until he "was officially diagnosed with P.T.S.D." Counsel argued:

> Based on 9-711 **I'm not sure how you can have actual knowledge without an official diagnosis of a condition and Dr. Blanton doesn't causally relate his P.T.S.D. within a reasonable degree of medical certainty until December of 2019.**

(Emphasis added.)

Counsel for appellees disagreed and argued:

> Yes, Your Honor. I think that the date of disablement would have been the date that **Mr. Sharp left his employment with ECI because in his own words it was the stress and anxiety of the workplace and the symptoms he was experiencing.**
>
> The medical records are clear that these symptoms have been ongoing, the anger and the anxiety for, well, the anger long before this started and the

> anxiety for quite some time and **I don't think it's required that we have to put a label on an occupational disease to confirm that he has the symptoms.**
>
> I think if the symptoms disabled him are the most relevant aspect of this particular case and on that basis I would say the disablement was when he left the institution in August of 2017.
>
> The claim form was not filed until December of 2019, more than two years after that date so, therefore, I think the claim is barred by limitations.

(Emphasis added.)

The Commission disallowed Sharp's claim on the ground that it was barred by the applicable statute of limitations. The Commission determined that the date of Sharp's disablement was August 19, 2017, and that his claim, filed on December 13, 2019, "was not filed within two years from the date of disablement[.]"

Sharp requested a rehearing, which was denied. He then filed a petition for judicial review in the Circuit Court for Somerset County.

B. Judicial Review

In his petition for judicial review, Sharp requested that the "matter be reviewed on the record before the Commission with respect to the issue of the Commissioner's decision that [his] claim is barred by the statute of limitations." Sharp asserted that the Commission's decision was "an error of law." The parties filed cross-motions for summary judgment.

At a hearing on March 19, 2021, Sharp argued that his claim was filed within two years of the date when he first had actual knowledge that his disablement was caused by his employment, as required by LE § 9-711. He maintained that actual knowledge required

"something real as opposed to speculative or constructive" and that "an employee does not have actual knowledge because they suspect a condition was caused by their job." According to Sharp, "[a]ctual knowledge should only be imputed to the employee when a treating physician has advised them that their condition was caused by their employment." Sharp argued further that "complicated medical questions require expert medical opinions" and that a "diagnosis of PTSD and the cause of PTSD is clearly a complex medical question and not something that the claimant alone can determine." Because he was not diagnosed with PTSD until March 2019 and his treating psychiatrist did not causally relate the PTSD to his job as a correctional officer until December 9, 2019, Sharp concludes that the filing of his workers' compensation claim on December 13, 2019 was within the 2-year statute of limitations.

Sharp also argued that the Commission erred in determining that his claim was barred by the statute of limitations without first making a finding that he sustained a compensable occupational disease for which a claim must be filed.

Appellees argued that they were entitled to summary judgment because the statute of limitations began to run on August 19, 2017, when Sharp had actual knowledge that his disablement was caused by his employment, and Sharp did not file his claim until December 13, 2019, more than two years later. They argued that there was no case law specifically stating that there must be a medical diagnosis and that Section 9-711 requires only that "the claimant knew the disablement was caused by the exposure to the hazards of the workplace." Because, according to appellees, Sharp knew that his stress was caused

by his employment and he resigned because of it, Sharp had the requisite actual knowledge in August of 2017.

With respect to Sharp's assertion that the Commission should have made a preliminary finding that Sharp sustained a compensable occupational disease, appellees argued that there was no such requirement in the statute and that it was proper to first address the statute of limitations issue.

The circuit court found that there was no dispute as to material facts and that the question before it was a purely legal one, namely, whether Sharp's claim was barred by the statute of limitations as set forth in LE § 9-711. The court held that Sharp's resignation letter on August 5, 2017, "demonstrates that he was aware that stress was a workplace-caused disease when he resigned, and he acknowledged the disease and cause around the same time." Accordingly, the court granted appellees' motion for summary judgment and denied Sharp's motion for summary judgment.

On March 26, 2021, Sharp filed a motion to alter or amend the court's judgment, which the circuit court denied on April 14, 2021. This timely appeal followed.

DISCUSSION

A. Standard of Review

Section 9-745 of the Labor and Employment Article permits two modes of judicial relief for a party aggrieved by a decision of the Commission. *Bd. of Educ. for Montgomery Cnty. v. Spradlin*, 161 Md. App. 155, 166 (2005). The mode applicable to the instant case is found in Section 9-745(c), which authorizes what is essentially a judicial review of the Commission's decision in which the circuit court "reviews the record of the proceeding

before the Commission and decides, purely as a matter of law, whether the Commission acted properly." *Id.* at 167. Therefore, the role of a reviewing court is to decide if the Commission "acted within its powers and correctly construed the law and facts[.]" LE § 9-745(e)(1). If the court answers this question in the affirmative, it will "confirm the decision of the Commission." *Id.* If the judicial response is no, then it will "reverse or modify the decision or remand the case to the Commission for further proceedings." LE § 9-745(e)(2).

This appeal is from the circuit court's grant of summary judgment in favor of appellees. The entry of summary judgment is governed by Maryland Rule 2-501, which provides:

> The court shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law.

Md. Rule 2-501(f).

"'When reviewing a grant of summary judgment, we must make the threshold determination as to whether a genuine dispute of material fact exists, and only where such dispute is absent will we proceed to review determinations of law."' *Stachowski v. Sysco Food Servs. of Baltimore, Inc.*, 402 Md. 506, 515-16 (2007) (quoting *Remsburg v. Montgomery*, 376 Md. 568, 579 (2003)). The standard of review in a workers' compensation claim that is disposed of by summary judgment is *de novo,* that is, whether the trial court's legal conclusions are legally correct. *See D'Aoust v. Diamond*, 424 Md.

549, 574 (2012); *Uninsured Employers' Fund v. Danner*, 388 Md. 649, 658-59 (2005) (citing *Johnson v. Mayor and City Council of Baltimore*, 387 Md. 1, 5-6 (2005)).

B. Actual Knowledge

Because the parties agree that there is no dispute of material facts, the sole issue to be resolved is whether, as a matter of law, Sharp's claim is barred by the statute of limitations as set forth in LE § 9-711(a). The section of LE § 9-711(a) applicable to the instant case is LE § 9-711(a)(1)(ii), which provides that if a covered employee suffers a disablement or death as a result of an occupational disease, such employee shall file a claim with the Commission within two years after the date "(ii) when the covered employee … first had actual knowledge that the disablement was caused by the employment." Sharp contends that he "did not meet the requirements of [LE] § 9-711 to file a claim with the Commission until he was diagnosed with PTSD and had actual knowledge that his condition was related to his employment as a correctional officer." Sharp explains that under the case law "[a] proper diagnosis of a condition is a pre-requisite to having actual knowledge that a condition is work-related to start the time limit for filing a claim." According to Sharp, "[s]imply showing potential symptoms of a yet-to-be diagnosed occupational disease does not constitute actual knowledge[.]" Sharp argues further that "actual knowledge should only be imputed to the employee when a treating physician has advised them that their condition was caused by their employment." Sharp concludes that, because he was not diagnosed with PTSD until March 2019 and his diagnosis was not related to his employment by a physician until December 2019, he did not have actual knowledge that his disablement was caused by his employment until December 9, 2019,

and thus the filing of his claim with the Commission on December 13, 2019, was timely. A review of the applicable case law and the undisputed facts of this case convince us that Sharp's argument is unavailing.

The parties direct our attention to two cases, *Lombardi v. Montgomery Cnty.*, 108 Md. App. 695 (1996), and *Helinski v. C&P Tel. Co.*, 108 Md. App. 461 (1996), both arguing that the case law supports their respective positions. Sharp also relies on two older cases, *Consolidation Coal Co. v. Porter*, 192 Md. 494 (1949) and *Consolidation Coal Co. v. Dugan*, 198 Md. 331 (1951).

1. *Lombardi*

In *Lombardi*, the claimant was employed as a firefighter and paramedic until he retired in April 1988 because of an unrelated back injury. 108 Md. App. at 699-700. A physical examination conducted upon his exit from employment did not reveal any elevated blood pressure. *Id.* at 700. Later in 1988, Lombardi was diagnosed with hypertension. *Id.* In 1991, after a discussion with an attorney, Lombardi realized that there could be a connection between his hypertension and his former occupation. *Id.* His belief was substantiated when an examining physician concluded that Lombardi's hypertension resulted from his work as a firefighter. *Id.* At that point, Lombardi filed a workers' compensation claim. *Id.*

The Commission disallowed Lombardi's claim on the grounds, *inter alia*, that the claim was barred by the two-year statute of limitations. *Id.* On appeal to the circuit court, the parties filed cross-motions for summary judgment, and the court granted the employer's motion. *Id.* at 701. The court held 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.*

On appeal, we reviewed the prior codifications of LE § 9-711. We started with Article 101, § 26 of the Maryland Code, which was in effect from 1947 to 1967. Section 26 did not specify a knowledge requirement on the part of the claimant. We noted that in *Porter*, 192 Md. 494, the Court of Appeals construed Section 26 to provide that the limitations period began to run in an occupational disease case "from the time the employee or some one [sic] in his behalf *knew or had reason to believe* that he was suffering from an occupational disease and that there was a causal connection between his disability and occupation." *Lombardi*, 108 Md. App. at 704-05 (internal quotation marks and citation omitted) (emphasis in original). In 1967, however, Article 101, § 26 was amended to include an explicit knowledge requirement. The amended statute provided that a claim for an occupational disease must be filed "'within two (2) years from the date of disablement or the date when the claimant first *has actual knowledge such disablement was caused by his employment*, or death, as the case may be[.]'" *Id.* at 705 (quoting Md. Code (1967), Article 101, § 26) (emphasis added in *Lombardi*). Noting that the then-current version of LE § 9-711(a) was "largely in sync with the 1967" version, we recognized that the "substantive amendments to the statutory language show a legislative intent to change the standards in regards to the filing of claims with the Commission" so as to require actual knowledge to commence the running of the statute of limitations for filing a claim with the Commission. *Id.* at 707-08.

In considering the question of what constitutes "actual knowledge," we determined that the phrase was clear and unambiguous. *Id.* at 709. We looked to *Black's Law Dictionary* 34 (6th ed. 1990), and accorded the words "their common and ordinary meaning[,]" specifically, "'[s]omething real, in opposition to constructive or speculative. … It is used as a legal term in contradistinction to [the terms] virtual or constructive . …'" *Id*. Recognizing that the question of when Lombardi had actual knowledge that his hypertension stemmed from his work as a firefighter was "a material fact over which reasonable minds could differ[,]" we concluded that the circuit court erred in ruling, as a matter of law, that Lombardi's claim was barred by the statute of limitations. *Id.* at 710-13.

2. *Helinski*

The timeliness of a claim of occupational disease was also addressed in *Helinski*, a case that, as we have already noted, both parties rely upon. In *Helinski*, the claimant was employed by C&P Telephone Company ("C&P") as a service representative beginning in 1972. 108 Md. App. at 464. On February 15, 1989, Helinski was diagnosed with "'contact allergic dermatitis' of the eyelid[,]" but the examining ophthalmologist was unable to pinpoint the cause of the dermatitis. *Id.* On March 28, 1989, a physician employed by C&P examined Helinksi and told her that he was not sure of the cause of the dermatitis; he suggested to her that formaldehyde might be the culprit. *Id.* Helinski turned in to C&P the bill from her doctor and a bill for a prescription, but her supervisor later returned them to her and advised her that C&P would not provide reimbursement because C&P did not find the dermatitis to be work-related. *Id.* at 465. Helinski's dermatitis and other maladies

finally took their toll on her, and on April 25, 1991, she missed work for the first time due to her symptoms. *Id.*

On January 30, 1992, Dr. Grace Ziem diagnosed Helinski as having an occupational disease. *Id.* at 466. Thereafter, on July 1, 1992, she filed a claim with the Commission. *Id.* After a hearing, the Commission found that she did not sustain an occupational disease of multiple chemical sensitivity arising out of and in the course of employment. *Id.* The Commission also determined that, even if she had sustained an occupational disease, her claim would have been barred by limitations. *Id.* On judicial review, the circuit court entered summary judgment against Helinski, finding that her claim was filed too late. *Id.* at 466-67.

On appeal to this Court, C&P argued that Helinski's claim was barred by the statute of limitations "because she knew that she had an occupational disease as early as March of 1989, or at the latest, in December of 1989." *Id.* at 468. We disagreed. We observed that under the Workers' Compensation Act ("Act") Helinski "could not have filed a claim unless she contracted an 'occupational disease' that caused her 'disablement.'" *Id.* at 469. We then discussed at length the concepts of "occupational disease" and "disablement" under the Act, concluding that a pre-requisite to filing a claim was that a disablement must exist. *Id.* at 474. Because LE § 9-711 provided a choice of alternatives to satisfy the two-year statute of limitations, we concluded that the statute could not have begun to run until either (1) April 25, 1991, the first day that Helinski was unable to perform her work because of her occupational disease, and thus the date of her disablement, or (2) January 30, 1992, the date that Dr. Ziem diagnosed Helinski with an occupational disease, and thus the date

that she first had actual knowledge that her disablement was caused by her employment. *Id.* Accordingly, Helinski's claim filed on July 1, 1992, was timely. *Id.*

3. *Porter* and *Dugan*

In *Porter*, a case decided under the pre-1951 version of the workers' compensation statute, Porter stopped working on April 15, 1944 because of "pains in his chest, cough, sputum, weakness, loss of appetite and slight loss of weight." 192 Md. at 496. He consulted a doctor who concluded that he had a '"bronchial condition."' *Id.* Several years later, in January 1947, Porter was diagnosed as having silicosis, an occupational disease. *Id.* at 497. He filed a claim for compensation on January 20, 1947, and amended it on February 12, 1947. *Id.* In a case of first impression, the Court of Appeals stated:

> The employee in the case now before us did not suspect or believe that he was suffering from silicosis, the occupational disease, until January, 1947. Although he had diligently consulted doctors, none of the doctors knew or apparently suspected until that date that he had silicosis. It was therefore impossible for him to file the claim until he knew or had reason to believe the cause of his disability or that he suffered an occupational disease.

Id. at 506. Because Porter did not know, or have reason to know, that he suffered from an occupational disease or that there was a causal connection between his disability and occupation until his diagnosis of silicosis in January 1947, the Court held that the filing of Porter's clam in January/February of 1947 was timely.

In *Dugan*, another case involving silicosis, and decided under the pre-1951 version of the workers' compensation statute, the State Industrial Accident Commission awarded workers' compensation to Dugan for permanent total disability resulting from silicosis arising out of and in the course of his employment. 198 Md. at 332. Prior to 1951, the

Workmen's Compensation Act provided compensation for an employee's disability or death resulting from a list of named occupational diseases. *Id.* at 333. For a period of many years, Dugan had symptoms that "included a cough, shortness of breath, and expectoration of colored sputum." *Id.* at 332. Because of the severity of the symptoms, he ceased working on April 28, 1943. *Id.* On the following day, he consulted a doctor who diagnosed his condition as asthmatic bronchitis, which was not named as an occupational disease in the statute. *Id.* at 332-33. Nearly seven years later, on January 16, 1950, Dugan was informed that an x-ray examination disclosed that he had silicosis, which was listed as an occupational disease in the statute. *Id.* On appeal to the Court of Appeals, the employer argued that Dugan's claim had not been timely filed. The Court of Appeals held that the claim was timely filed, stating, in part:

> **We are of the opinion that the claimant in this case was justified in relying upon the diagnosis of his physician. Silicosis can be diagnosed only by a physician. It cannot be inferred that the claimant knew, or had reason to believe, that he had silicosis when his physician did not suspect that he had it, but thought that he was suffering from asthmatic bronchitis**. Silicosis is a pneumoconiosis caused by inhalation of the dust of stone, sand, or flint. Asthmatic bronchitis, commonly known in the coal mine regions as "miner's asthma," is a pneumoconiosis caused by inhalation of coal dust. The claimant had been exposed to rock dust and sand as well as to coal dust. The purpose of statutes of limitations, which require the assertion of claims within a specified period of time after notice of the invasion of legal rights, do not demand that a case like this shall be barred. The humane purpose of the Workmen's Compensation Act does not intend such a result to attach to blameless ignorance of fact.

Id. at 336 (emphasis added).

4. Analysis

Neither *Lombardi* nor *Helinski* support Sharp's contentions. In *Lombardi*, the claimant was diagnosed with hypertension shortly after his retirement for an unrelated injury, but was not told that his hypertension was caused by his work as a firefighter until three years later when he was examined by a physician. 108 Md. App. at 700. We held that the question of when Lombardi had actual knowledge of the causal relationship between his hypertension and employment was a question of fact and thus the trial court erred in ruling that the claim was barred by the statute of limitations as a matter of law. *Id.* at 710-11. We did not address Sharp's contention that a medical diagnosis of a condition is a pre-requisite to having actual knowledge. However, we did reject, albeit impliedly, Sharp's argument that actual knowledge of a causal connection between the claimant's disablement and employment could only be imputed to the claimant when so advised by a treating physician. Notwithstanding the claimant's testimony in *Lombardi* that he did not realize the connection between his hypertension and his former occupation until his treating physician reached the opinion that the hypertension was caused by his work as a firefighter, this Court held that the issue of when the claimant had actual knowledge was "a material fact over which reasonable minds could differ." *Id.* at 710-13.

In *Helinksi*, this Court's focus was on the date of disablement, because the claimant "could not have filed a claim until an occupational disease caused her disablement." 108 Md. App. at 474. We determined that, although Helinski was diagnosed with contact allergic dermatitis in 1989, the date of her disablement did not occur until April 25, 1991, when Helinski was first unable to work because of the dermatitis. *Id.* at 473-74. As a

result, the claimant's filing of her claim on July 1, 1992, was timely. *Id.* at 474. Without any discussion, we held, in the alternative, that Helinski's filing of her claim was timely because such filing was within two years of January 30, 1992, the date of Dr. Ziem's diagnosis of an occupational disease caused by her employment. *See id.* Unlike the facts of the instant case, the evidence in *Helinski* amply supported a lack of actual knowledge on the part of the claimant of the causal relationship between her dermatitis and employment until Dr. Ziem's diagnosis, because at the time of the initial diagnosis of dermatitis in 1989, two doctors were unable to determine the cause of that condition, and her employer did not find that her dermatitis was work-related. *Id.* at 464-65. Again, we did not have the occasion to address Sharp's contentions that a medical diagnosis or opinion is a pre-requisite for actual knowledge of a work-related condition or a causal relationship between the disablement and employment.

Sharp's reliance on *Porter* and *Dugan* is also unavailing. Sharp cites these cases for the proposition that "[a] proper diagnosis of a condition is a pre-requisite to having actual knowledge that a condition is work-related to start the time limit for filing a claim." What Sharp overlooks, however, is that the Workman's Compensation Act ("Pre-1951 Act") governing *Porter* and *Dugan* was very different from the present Act. Prior to 1951, compensation for an occupational disease was limited to the occupational diseases listed in the statute. *Dugan*, 198 Md. at 333. The claimants in both cases were examined when they stopped working and were diagnosed, without the benefit of an x-ray examination, to have a '"bronchial condition"' in *Porter*, 192 Md. at 495, and "asthmatic bronchitis" in *Dugan,* 198 Md. at 332. Neither a bronchial condition nor asthmatic bronchitis was listed

in the Pre-1951 Act as a compensable occupational disease. *Dugan*, 198 Md. at 333; *see Porter*, 192 Md. at 496-97. It was not until years later that both claimants underwent an x-ray exam, which revealed that each claimant had silicosis, or sand dust in the lungs. *Porter*, 192 Md. at 497; *Dugan*, 198 Md. at 333. At that time, silicosis was listed in the Pre-1951 Act as a compensable occupational disease. *Porter*, 192 Md. at 497. Because none of the doctors suspected that the claimants in *Porter* and *Dugan* suffered from silicosis until the x-ray examination, the Court of Appeals concluded that the claimants did not know or have reason to know until such diagnosis that they suffered from an occupational disease or that there was a causal connection between the disablement and the occupation. *Porter*, 192 Md. at 506; *Dugan*, 198 Md. at 336. Given the overtly dissimilar factual and legal circumstances in *Porter* and *Dugan* from the instant case, we see no support in these cases for Sharp's claim that a medical diagnosis of an occupational disease is necessary for there to be actual knowledge thereof.

The instant case, however, is factually and legally similar to *Mut. Chem. Co. of Am. v. Pinckney*, 205 Md. 107 (1954). In that case, Pinckney, who was employed as a laborer by Mutual Chemical Company of America ("Mutual"), filed a claim with the State Industrial Accident Commission for permanent injury to his nose, specifically a perforated nasal septum. 205 Md. at 110. Pinckney had been employed by Mutual from May 29, 1947, to January 5, 1948, when he was discharged. *Id.* Thereafter, he worked for himself as a contractor. *Id.* Pinckney testified that, while he was employed by Mutual, he did not know that there was a hole in his nose and that he did not lose any time from work. *Id.* at 111. He did say, however, that he could not '"get another job anywhere on account of my

head giving me trouble"' and that he could not work again at Mutual. *Id.* Pinckney testified that he did not find out he had a hole in his nose until October 26, 1951, three days before his claim was filed with the Commission. *Id.*

On cross-examination, Pinckney stated that he knew something was wrong with his head before his employment with Mutual terminated. *Id.* Pinckney testified that "his nose had given him 'trouble' ever since he left the employ of Mutual," that it "'gave [him] trouble all along[,]'" and that he had "an 'ache in [his] head and [his] nose burned and burned.'" *Id.* When asked what he thought was the cause of his nose trouble, Pinckney said that he knew that he "'got it from that chemical, working in that filter and boiling steam[.]"' *Id.* He went to the dispensary and complained, but was told "'it would be all right[.]" *Id*. at 112.

The Commission found that Pinckney's claim was not filed within the applicable limitations period. *Id*. The Court of Appeals agreed, stating:

> **[W]hen [Pinckney] was discharged by Mutual he knew that his nose was troubling him and that this was caused by the chemicals there. This trouble with his nose gave no sign that it would cease. His injury** was not latent or trifling, but **prevented him from further work at Mutual** or at any other place, except working for himself. When he was discharged by Mutual he knew or should have known that his disability, whether permanent or temporary, was compensable. **The only thing that [Pinckney] did not know when he was discharged from his employment and until 1951, was that there was a perforation. If claimant had any compensable disability at all, it was because of an inability to work for Mutual.** His knowledge of his inability to continue working for Mutual was as great in 1948 as in 1951.
>
> **As the appellee admitted that he knew his "trouble" was caused by his occupation when he was discharged by Mutual on January 5, 1948, and he could not work there any longer;** as his claim was not filed

> within one year from that date; . . . **the motion for a judgment n.o.v. should have been granted.**

Id. at 116-17 (emphasis added).

There are four key similarities between *Pinckney* and the instant case. First, both Pinckney and Sharp suffered from symptoms of an occupational disease. Pinckney stated that he knew that something was wrong with his head before his employment with Mutual was terminated and that upon his discharge, he was told by Mutual that his head was going '"to give [him] a little trouble[.]"' 205 Md. at 111. Sharp admitted that while working at ECI, he suffered from stress and anxiety related to his job and was placed on medication. In his report on July 26, 2019, Dr. Blanton wrote that Sharp reported "symptoms of PTSD ongoing since 2010[.]" Second, the symptoms suffered by Pinckney and Sharp caused both to be unable to work in the job that they held with their respective employers, and thus were disabled. *See* LE § 9-502(a). When Pinckney was discharged by Mutual, he knew that his nose was troubling him and prevented him from further work at Mutual, or at any other place. 205 Md. at 116. In his resignation notice dated August 5, 2017, Sharp stated that he was leaving his employment with ECI because "[u]pon my hire on 2-17-10, the high stress was almost immediate and by years end I was placed on anxiety medications and no job that has that effect is healthy." Sharp further testified before the Commission that "the stress and anxiety and other factors like that" led to his resignation.

Third, both Pinckney and Sharp had actual knowledge, at the time that they left their respective employments, that the disablement was caused by the employment. Pinckney admitted "that when he was discharged by Mutual on January 5, 1948, he knew something

was wrong with his nose, that this had been giving him trouble ever since, and he knew this was caused by the chemicals, and that he could not work in chemicals after that time."[1] *Id.* Sharp admitted in his August 5, 2017 resignation notice that the "high stress" experienced by him, which resulted in his resignation, was caused by his employment as a correctional officer.

Lastly, at the time of Pinckney's discharge and Sharp's resignation, neither one had received a medical diagnosis of an occupational disease or a medical opinion causally relating the disablement to the employment. At the time of his discharge, Pinckney knew only "that his nose was troubling him and that this was caused by the chemicals[.]" *See id*. Although seen by a doctor several times for stress and anxiety, Sharp was not diagnosed with PTSD until March 2019 and did not receive a medical opinion of causation between his PTSD and employment until December 2019.

Because of the key similarities between *Pinckney* and the instant case, the result, in our view, should be the same. Sharp suffered from stress and anxiety arising out of and in the course of his employment as a correctional officer; he admitted that the stress and anxiety led to his resignation on August 19, 2017; and he knew that his employment caused his disablement because "no job that has that effect is healthy." Therefore, Sharp had actual

[1] In his reply brief to this Court, Sharp claimed that reliance on *Pinckney* is misplaced because "*Pinckney* does not apply the 'actual knowledge' standard outlined by *Helinksi* and *Lombardi* and uses the former 'knew or should have known' standard." Sharp is correct that the statute of limitations, Article 101, § 26, governing *Pinckney* required only that the claimant "knew or should have known" and not the "actual knowledge" mandated by Section 9-711(a)(1)(ii) of the current Act. Nevertheless, it is clear from the facts of *Pinckney* that the Court of Appeals based its holding that Pinckney's claim was barred by limitations on Pinckney's actual knowledge.

knowledge, as of the date of his resignation, August 19, 2017, that his disablement was caused by his employment. Under LE § 9-711(a)(1)(ii), Sharp was required to file a workers' compensation claim within two years of that date, which he failed to do.

Section 9-711(a)(1)(ii) does not provide, either expressly or impliedly, that a medical diagnosis of an occupational disease or a medical opinion of a causal connection between a disablement and employment is necessary for a claimant to have actual knowledge. The issue of when a claimant has actual knowledge that the disablement was caused by the employment is an issue of fact, and thus its determination depends on the circumstances of a particular case. The presence or absence of a medical diagnosis or medical opinion on causation is just one of a myriad of circumstances to be considered in such determination.

For these reasons, we reject Sharp's arguments. Appellees were entitled to judgment as a matter of law because Sharp's claim was barred by the applicable statute of limitations.

C. Finding of Occupational Disease

Sharp also contends that the Commission was required to make a finding that he sustained an occupational disease of PTSD arising out of and in the course of his employment before finding that his claim was barred by the statute of limitations. He asserts that the circuit court erred by failing to remand the instant case back to the Commission for a determination as to whether Sharp sustained a compensable occupational disease. This contention is without merit.

As we have already noted, "[s]tatutes of limitations are remedial legislation and rest upon sound public policy, for they are enacted to afford protection against stale claims after a lapse of time which ought to be sufficient for a person of ordinary diligence, and after which the defendant might be placed at a disadvantage by reason of long delay." *McMahan v. Dorchester Fertilizer Co.*, 184 Md. 155, 159-60 (1944). "By requiring persons to seek redress by actions at law within a reasonable time, the Legislature imposes a salutary vigilance and puts an end to litigation." *Id.* at 160. Statutes of limitation are designed to serve important societal benefits, including judicial economy. *Marsheck*, 358 Md. at 404.

We know of no statute, case, or rule that prevents a court or agency from considering the procedural issue of limitations before making a determination on a merits issue, such as whether a claimant sustained a compensable occupational disease. In fact, judicial economy supports a determination of the limitations issue as a preliminary matter.

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