Circuit Court for Montgomery County
Case No. 487772V

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 431

September Term, 2022

IN THE MATTER OF KEITH DIEHM

Nazarian,
Leahy,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: February 27, 2023

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. MD. R. 1-104.

**At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Keith Diehm was a police officer for the Montgomery County Police Department. While working between 2005 and 2015, Diehm witnessed several incidents involving grave injuries and multiple fatalities. The most significant of these events occurred in March 2012, in which three adolescents burned to death after evading police in a stolen car. Diehm left the Department in 2015. Diehm obtained a psychological exam on April 5, 2021 where Dr. Aaron R. Noonberg opined that "Diehm's traumatic occupational exposures caused a posttraumatic stress disorder." Shortly after, Diehm filed an occupational disease claim with the Workers' Compensation Commission, alleging that he developed posttraumatic stress disorder ("PTSD") as a result of repeated traumatic situations that he witnessed in his career as a police officer.

The County opposed Diehm's claim, arguing that it was barred by the statute of limitations. Diehm argued that the statute of limitations did not start running—because he did not have "actual notice" that his condition was related to his employment—until Dr. Noonberg diagnosed him with PTSD on April 5, 2021. The Commission found that Diehm's claim was barred by the statute of limitations and denied it. Diehm then filed a petition for judicial review in the Circuit Court for Montgomery County. The circuit court, finding the Commission's decision was supported by substantial facts in the record, affirmed the Commission. Diehm then noted this appeal.

ANALYSIS

Maryland law provides that PTSD may be compensable as an occupational disease under the Workers' Compensation Act. *Means v. Baltimore Cnty.*, 344 Md. 661, 670 (1997). For occupational disease claims, an employee has two years in which to file a claim.

MD. CODE, LABOR & EMPLOYMENT ("LE") § 9-711(a)(1). The first critical question for this case is "two years from *when*?" The date that starts the running of the statute of limitations is either the date of disablement *or* the date when the employee first had "actual knowledge" that the disablement was caused by the employment. *Id.* The "actual knowledge" rule here is unique. For most civil claims, Maryland courts apply the "discovery rule," meaning that the claim does not accrue—and the statute of limitations does not start running—until the date when the plaintiff knew, or reasonably *should have known,* of the harm. *Doe v. Maskell*, 342 Md. 684, 690 (1996); *Poffenberger v. Risser*, 290 Md. 631, 636 (1981). For occupational disease claims, however, the Workers' Compensation Act is more favorable to employees than the "discovery rule" because a claim does not accrue until the employee has "actual knowledge." LE § 9-711(a)(1)(ii); *Helinski v. C&P Telephone Co.*, 108 Md. App. 461, 473 (1996). "Actual" means real and not constructive or speculative. *Lombardi v. Montgomery Cnty.*, 108 Md. App. 695, 709 (1996).

The second critical question is: "actual knowledge" of *what*? According to the statute, "actual knowledge" is knowledge "that the disablement was caused by the employment." LE § 9-711(a)(1)(ii). Contrary to Diehm's argument, the statute does not provide that a diagnosis or a medical opinion regarding causation is required for an employee to have actual knowledge. *Cf. Mutual Chemical Co. v. Pinckney*, 205 Md. 107, 117 (1954) (holding employee had actual knowledge that his disablement was caused by his employment because he "admitted that he knew his 'trouble' was caused by his occupation when he was discharged.").

Resolving these two questions, to determine when the employee had "actual knowledge that the disablement was caused by the employment," is a question of fact. *Lombardi*, 108 Md. App. at 710 ("reasonable minds could have differed as to when appellant had the requisite knowledge"). When the Commission makes findings of fact, we apply the deferential "substantial evidence" test. *See Spencer v. Md. St. Bd. of Pharmacy*, 380 Md. 515, 529 (2004). The Commission's decision is supported by substantial evidence when "a reasoning mind could have reached the same factual conclusions reached by the agency on the record before it." *Id.* Here, Diehm testified before the Commission that he "always knew something was wrong, especially how [his] personality changed a lot." Diehm cited "how [he] felt overall" as one of the reasons for leaving his job with the police department. Reports by both Dr. Noonberg and independent medical examiner Dr. Douglas Craig indicated that the 2012 incident was a significant turning point in Diehm's health. A reasoning mind could find that Diehm had actual knowledge that his disablement was caused by his employment as late as the time he left the police department. We therefore hold that the Commission's finding was supported by substantial evidence.[1]

[1] Diehm argues in the alternative that the Commission erred as a matter of law by applying the "discovery rule" standard instead of the "actual knowledge" standard. When a party challenges how an agency applied a statute, the question is a mixed question of law and fact which we also review under the deferential "substantial evidence" standard." *Bayly Crossing, LLC v. Consumer Prot. Div.*, 417 Md. 128, 138 (2010). Moreover, the decision of the Workers' Compensation Commission is presumed to be correct, and the party challenging the decision has the burden of proof. LE § 9-745(b). Diehm offers no support beyond conjecture that the Commission applied the incorrect standard. But even if it did, we would affirm nonetheless because, as a mixed question of law and fact, there is substantial evidence in the record to support the Commission's determination that Diehm

For the foregoing reasons, we hold that the Commission was correct in finding Diehm's claim barred by the statute of limitations.

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

had actual knowledge that his disablement was caused by his employment more than two years before he filed his claim for occupational disease.