Circuit Court for Anne Arundel County
Case No. C-02-CV-21-000990

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 494

September Term, 2022

IN RE: ST. ANDREWS UNITED METHODIST CHURCH, ET AL.

Wells, C.J.,
Graeff,
Nazarian,

JJ.

Opinion by Wells, C.J.

Filed: January 25, 2023

*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.

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. Rule 1-104.

This is an appeal from an on-the-record petition for judicial review of a decision of the Workers' Compensation Commission ("the Commission"). In April of 2014, while at work, appellee, Margaret Perry suffered an injury to her neck. In February of 2020, she filed a claim with the Commission for permanent partial disability. Following a hearing on the claim for modification, the Commission ordered appellants, St. Andrews United Methodist Church ("Employer") and Church Mutual Insurance Company ("Insurer") (collectively referred to as "Employer and Insurer" or "appellants") to pay Perry compensation. Employer and Insurer timely filed a Request for Rehearing, pursuant to Md. Code (1991, 2016 Repl. Vol.) Labor and Employment ("LE") § 9-726, alleging the discovery of new information and, for the first time, that the statute of limitations had run on Perry's permanent partial disability claim pursuant to LE § 9-736(b). After a hearing on the Request for Rehearing, the Commission ultimately denied their request. Employer and Insurer then filed an on-the-record petition for judicial review of the Commission's decision with the Circuit Court for Anne Arundel County. Following a hearing, the circuit court affirmed the Commission's decision. On appeal to this Court, Employer and Insurer raise three issues,[1] which we have rephrased:

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[1] 1. Did the [c]ircuit [c]ourt err in ruling that the [Commission] had subject matter, or fundamental, jurisdiction to hear issues of permanent partial disability and issue an award of permanent partial disability more than five years after the last date of compensation paid, pursuant to [LE] § 9-736(b) (2022)?

2. Did the [c]ircuit [c]ourt and the [Commission] err in finding that the [Employer and Insurer] did not meet the standards for a

1. Whether the five-year limitations period in LE § 9-736(b) represents a waivable statute of limitations defense or a limit on the Commission's subject matter jurisdiction over untimely claims?

2. Whether the Commission erred as a matter of law by ruling that Employer and Insurer did not have proper grounds for a rehearing pursuant to LE § 9-726 and COMAR 14.09.03.14?

3. Whether the Commission erred as a matter of law when it failed to rule that the statute of limitations had run on further compensation pursuant to LE § 9-736(b)?

For the reasons we discuss below, we affirm the Commission's decision.

FACTUAL AND PROCEDURAL BACKGROUND

On April 23, 2014, Perry, then the Director of Marketing at St. Andrews United Methodist Church Day School, was walking around a blind corner of the school when she was struck in her neck by a stack of metal chair legs. Although it is not entirely clear from the record, it seems that Insurer last paid Perry temporary total disability benefits on May 15, 2014. On February 13, 2020, more than five years after the injury and last compensation payment, Perry filed a claim with the Commission for permanent partial disability.

A hearing was held on June 22, 2020 regarding the nature and extent of permanent partial disability to Perry's neck ("2020 Modification Hearing" or "Modification Hearing"). Counsel for Employer and Insurer, and counsel for Perry, were both present. At

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Request for Rehearing pursuant to LE § 9-726 and COMAR [Code of Maryland Regulations] 14.09.03.14?

3. In the alternative, did the [c]ircuit [c]ourt and the [Commission] err in ruling that the defense of statute of limitations had been waived, therefore failing to address whether the statute of limitations on further benefits had run pursuant to LE § 9-736(b)?

the beginning of the Modification Hearing, the Commissioner raised the issue of temporary total disability benefits[2]:

> THE COMMISSION: Temporary benefits.
>
> [EMPLOYER/INSURER'S COUNSEL]: Your Honor, I have not been able to confirm that from my client, so I would ask to leave that blank for now, and I will follow up with her again today.
>
> THE COMMISSION: Okay. Do you happen to have any information, [Perry's counsel]?
>
> [PERRY'S COUNSEL]: Your Honor, this case has a long history, it's over six years old. We were here before, and I don't think she had any lost time and she has not worked for that company, for this Employer for a very long time.
>
> So I don't – I don't believe any have been paid, but I can't say for certain.
>
> THE COMMISSION: Can we agree that there have been none since the last award?
>
> [PERRY'S COUNSEL]: Yes. Yes, I can.
>
> THE COMMISSION: Okay.
>
> [EMPLOYER/INSURER'S COUNSEL]: Yes.

After the Modification Hearing, the Commission ordered Employer and Insurer to pay Perry compensation based on its finding that she suffered a 21% industrial loss of use of the body—17% related to her injury at work, and 4% due to pre-existing conditions.

[2] Commissioners typically ask for this information at these hearings as a preliminary matter because permanency awards are expressed in weeks of compensation payments, and the Workers' Compensation Act requires that permanency awards back-date the starting date of these weekly permanency payments to the last payment of temporary total disability. *See* LE § 9-631.

On July 1, 2020, Employer and Insurer timely filed a Request for Rehearing, pursuant to LE § 9-726, alleging the discovery of new information showing that temporary total disability was last paid to Perry on May 15, 2014. Additionally, Employer and Insurer claimed, for the first time, that the statute of limitations had run on Perry's permanent partial disability claim pursuant to LE § 9-736(b). The Commission scheduled the matter for a hearing, which was held on July 7, 2021 ("Motion for Rehearing"[3]).

At the Motion for Rehearing, counsel for Employer and Insurer admitted that the statute of limitations defense was not raised at the Modification Hearing "because at the time the information we had, we were unaware that statute of limitations had run."[4] Nonetheless, counsel argued that this defense was still timely raised in the Employer and Insurer's Request for Rehearing because the Commission "set this in for a hearing to hear that argument[.]" Counsel for Perry responded that Commission regulations do not allow a request to adjudicate an issue that was neither raised nor decided at an original hearing, unless the movant can point to an error of law or "newly discovered evidence." Further, counsel for Perry argued that the "newly discovered" payment ledger, indicating the last temporary disability payment, was available to the appellants at the time of the Modification Hearing.

[3] Although it is not specifically titled as such in the record, we agree with the Commissioner's characterization of this hearing as a "motion for rehearing" and, for purposes of clarity, refer to it as such in this opinion.

[4] For the Motion for Rehearing, Counsel for Employer and Insurer submitted a payment ledger to the Commission indicating that temporary total disability benefits were last paid to Perry on May 15, 2014.

At the conclusion of the Motion for Rehearing, the Commissioner denied the motion from the bench and explained her reasoning.

> THE COMMISSION: The decision that I issued back in June was based upon the record that was before me at that time, and so I'm not sure if we can say that an error of law was made based upon the record that was presented to me.
>
> I also agree with counsel for the Claimant that the information that we are using, as a basis for argument, was accessible to the employer and insurer at the time of the P.P.D. hearing. So, for those two reasons, I'm going to deny the motion.

That same day, the Commission initially issued an order *granting* Employer and Insurer's Request for Rehearing, and affirming its June 22, 2020 Order. However, noting a clerical error, the Commission rescinded its July 7, 2021 Order, and issued a corrected Order on July 9, 2021 denying Employer and Insurer's Request for Rehearing.

On July 26, 2021, Employer and Insurer filed an on-the-record petition for judicial review of the Commission's Order pursuant to LE §§ 9-737 and 9-745(c) and Maryland Rules 7-202(c)(1)(D) and 7-207(a). The parties filed memoranda in support of their respective positions and a hearing on this appeal was held on April 18, 2022 in the Circuit Court for Anne Arundel County. At the conclusion of that hearing, the circuit court judge, from the bench, affirmed the Commission's decision. On July 27, 2022, the circuit court then issued a written Memorandum and Order affirming the Commission's decision, specifically holding that: (1) the Commission had subject matter jurisdiction over Perry's issues for permanent partial disability; (2) the Commission did not err as a matter of law by ruling that Employer and Insurer did not have proper grounds for a rehearing; and (3)

the Commission did not err as a matter of law when it failed to hold that the statute of limitations had run on further compensation.

From these Orders, Employer and Insurer timely filed this appeal on May 18, 2022.[5]

STANDARD OF REVIEW

In an action for judicial review, this Court reviews the administrative agency's decision, not the decision of the circuit court. *Montgomery Cnty. v. Cochran*, 471 Md. 186, 208 (2020).

> [A] court's role in reviewing an administrative agency adjudicatory decision is narrow; it is limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law.

Id. (quoting *W.R. Grace & Co. v. Swedo*, 439 Md. 441, 453 (2014) (cleaned up)). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Motor Vehicle Admin. v. Barrett*, 467 Md. 61, 69 (2020).

As to workers' compensation cases particularly, LE § 9-745 governs judicial review of decisions of the Commission. Pursuant to LE § 9-745(c), for an "on-the-record" appeal, the reviewing court must determine: "(1) whether the Commission has 'justly considered all of the facts concerning the injury,' (2) whether it has 'exceeded the powers granted it by the [title],' and (3) whether it has 'misconstrued the law and the facts applicable in the case decided.'" *S.B. Thomas, Inc. v. Thompson*, 114 Md. App. 357, 365 (1997) (quoting

[5] Perry filed a motion to dismiss this appeal, arguing that the appellants failed to appeal from a final judgment. Upon consideration of Perry's motion to dismiss and the Employer and Insurer's opposition to the motion, we denied Perry's motion.

Gen. Motors Corp. v. Bark, 79 Md. App. 68, 76 (1989) (cleaned up)). *See also Cochran*, 471 Md. at 208. "The court must confirm the decision unless it determines that the Commission exceeded its authority or misconstrued the law or facts." *Richard Beavers Constr., Inc. v. Wagstaff*, 236 Md. App. 1, 13 (2018).

"Although the decision of the Commission is presumed to be prima facie correct, LE § 9-745(b)(1), this presumption does not extend to questions of law, which this Court reviews independently." *Elec. Gen. Corp. v. LaBonte*, 454 Md. 113, 131 (2017) (cleaned up). However, the Commission's interpretation of the Workers' Compensation Act is entitled to "some deference . . . unless its conclusions are based upon an erroneous conclusion of law." *Cochran*, 471 Md. at 208 (quoting *LaBonte*, 454 Md. at 131) (cleaned up).

Finally, the scope of judicial review here is limited. "Maryland courts have consistently held that the Commission's decision to deny a request to reopen and modify a claim is not a reviewable decision." *Bd. of Educ. of Harford Cnty. v. Sanders*, 250 Md. App. 85, 96 (2021), *aff'd*, *Sanders v. Bd. of Educ. of Harford Cnty.*, 477 Md. 1 (2021). Moreover, a reviewing court may only consider the issues that were raised and decided before the Commission. *Pressman v. State Accident Fund*, 246 Md. 406, 415 (1967); *Temporary Staffing, Inc. v. J.J. Haines & Co., Inc.*, 362 Md. 388, 404-05 (2001).

DISCUSSION

I. The Five-year Limitations Period in LE § 9-736(b) Represents a Waivable Statute of Limitations Defense, Rather than a Limit on the Commission's Subject Matter Jurisdiction.

A. Parties' Contentions

Employer and Insurer argue that the Commission, pursuant to LE § 9-736, lacked the subject matter, or fundamental, jurisdiction to consider Perry's issues for permanent partial disability because the claim was filed more than five years after the last payment of compensation. Looking at the text and legislative history of § 9-736(b), the appellants interpret "jurisdiction" to mean subject matter jurisdiction and read the provision as a limit on the Commission's jurisdiction rather than as a statute of limitations on a party's claim. Although the appellants concede that lack of jurisdiction was not raised at either hearing, they point out that lack of subject matter jurisdiction can be raised at any time. *Coroneos v. Montgomery Cnty.*, 161 Md. App. 411, 420 (2005).

Perry responds that the use of the term "jurisdiction" in § 9-736, although ambiguous, does not refer to the subject matter jurisdiction of the Commission, but rather a "waivable limitations defense[.]" For this proposition, Perry relies on *Vest v. Giant Food Stores, Inc.*, 329 Md. 461 (1993), and several decisions following it. Additionally, even if "jurisdiction" encompasses subject matter jurisdiction, Perry argues that the Commission still had subject matter jurisdiction to consider her claim for permanent partial disability benefits.

B. Analysis

"The Maryland Workers' Compensation Act is remedial and, as a result, is generally interpreted liberally in favor of the claimant." *McLaughlin v. Gill Simpson Elec.*, 206 Md. App. 242, 253 (2012). Nonetheless, "the predominant goal of the Court is to ascertain and implement the legislative intent[.]" *Arundel Corp. v. Marie*, 383 Md. 489, 502 (2004).

> Where the statutory language is plain and free from ambiguity, and expresses a definite and simple meaning, courts do not normally look beyond the words of the statute itself to determine legislative intent. If the words of the statute are susceptible to more than one meaning, it is necessary to consider their meaning and effect in light of the setting, the objectives and [the] purpose of the enactment. Therefore, we construe the statute as a whole and interpret each of its provisions in the context of the entire statutory scheme.

McLaughlin, 206 Md. App. at 253-54 (quoting *Md. Ins. Admin. v. Md. Individual Practice Ass'n, Inc.*, 129 Md. App. 348, 355 (1999) (citations and internal quotation marks omitted)).

The modification of a disability award by the Commission is governed by LE § 9-736, which provides in pertinent part:

> (b) (1) The Commission has continuing powers and jurisdiction over each claim under this title.
>
> (2) Subject to paragraph (3) of this subsection, the Commission may modify any finding or order as the Commission considers justified.
>
> (3) Except as provided in subsection (c) of this section, the Commission may not modify an award unless the modification is applied for within 5 years after the latter of:
>
> (i) the date of the accident;
>
> (ii) the date of disablement; or
>
> (iii) the last compensation payment.

Looking at the plain language of LE § 9-736, it is not entirely clear whether the five-year limitation in § 9-736(b)(3) is a waivable statute of limitations defense or a limit on the Commission's subject matter jurisdiction. Employer and Insurer argue that § 9-736(b) is "clearly" a limitation on the Commission's *subject matter* jurisdiction over claims to modify an award more than five years after the latter of: the date of accident, disablement,

or the last compensation payment. However, the appellants' argument reads "subject matter" into the statute where it does not exist. "Jurisdiction" is not defined in the Maryland Labor and Employment Article, but according to the Court of Appeals (now called the Supreme Court of Maryland[6]), "jurisdiction refers to two quite distinct concepts: (i) the power of a court to render a valid decree, and (ii) the propriety of granting the relief sought." *State v. Johnson*, 228 Md. App. 489, 503-04 (2016) (quoting *First Federated Commodity Trust Corp. v. Comm'r of Sec. for Md.*, 272 Md. 329, 334 (1974)). "The first, often referred to as 'fundamental jurisdiction,' has been defined as 'the power residing in [a] court to determine judicially a given action, controversy, or question presented to it for decision." *Id.* at 504 (quoting *Pulley v. State*, 287 Md. 406, 415 (1980)). The second "is invoked with regard to a narrow decision that a court is asked to render—or an action it is asked to take—*within* a case validly before it, and which may or may not accord with those general laws and rules restraining the court in any given case." *Id.* (citing *Pulley*, 287 Md. at 417) (emphasis in original) ("[T]he trial court retains its 'fundamental jurisdiction' over the cause, but its right to exercise such power may be interrupted by [ ] statute or Maryland Rule, . . ."). Since the term "jurisdiction" is ambiguous in this context, we "search[ ] for

[6] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See also*, Md. Rule 1-101.1(a) ("From and after December 14, 2022, any reference in these Rules or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland….").

legislative intent in other indicia, including the history of the legislation…" *Lockshin v. Semsker*, 412 Md. 257, 276 (2010).

In 1914, when the Workers' Compensation Act was enacted, the time within which an award could be reopened was unlimited. Acts of 1914, Chapter 800, ss 39, 42 and 53. *See Holy Cross Hosp. v. Nichols*, 290 Md. 149, 153-54 (1981) (relating the history of the "reopening" provision). Then, in 1931, the General Assembly amended this section of the Act, thereby severely limiting the time to apply for a modification to a prior award to one year from the final award of compensation. Ch. 342 of the Acts of 1931. *See Holy Cross Hosp.*, 290 Md. at 154. "The effect of that act was to change the existing law by imposing upon the right of one affected by an award to have it conform to changed conditions the limitation that such right could only be asserted within one year next following 'the final award of compensation.'" *Ireland v. Shipley*, 165 Md. 90, 97 (1933). In *Ireland v. Shipley*, the Supreme Court of Maryland held that for parties with final awards pre-dating the amendment, to assert their right, they would have to apply for modification within one year of the effective date of the amendment. *Id.* at 101-02. The Court reached this conclusion based on the statute's apparent purpose and intent:

> The rational basis of the policy underlying the act is that there be some definite time limit in respect to the award of compensation in order that employers may organize their businesses and insurers adjust their rates with an intelligent comprehension of the demands they may be called upon to meet.

Id. at 102.

In 1935, the limitations period was extended to three years from the final award or the last compensation paid from an award not designated as a final award. Ch. 236 of the

Acts of 1935. *See Holy Cross Hosp.*, 290 Md. at 154. The section was amended again in 1957 such that an application for modification of *any* award of compensation must be made within three years from the last compensation payment. Ch. 814 of the Acts of 1957. *See Holy Cross Hosp.*, 290 Md. at 154. It was increased to five years in 1969. Ch. 116 of the Acts of 1969. *See Holy Cross Hosp.*, 290 Md. at 154. Finally, in 2002 the legislature added language such that the five-year period runs after the latter of the date of the accident, the date of disablement, or the last compensation payment. Ch. 568 of the Acts of 2002. This amendment reflects how the statute is currently written. *See* LE § 9-736(b).

The Supreme Court of Maryland interpreted the provision again in 1993 in *Vest v. Giant Food Stores, Inc.*, 329 Md. 461 (1993).[7] In *Vest*, an employee ("Vest") injured his back while working at Giant Food Stores, Inc. ("Giant"). *Id.* at 464. Vest filed a claim with the Commission and was issued an award of compensation for temporary total disability.

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[7] In 1991, the General Assembly recodified Article 101, § 40, as LE § 9-736. At the time, section 9-736(b) provided:

> (b) *Continuing powers and jurisdiction; modification.*—(1) The Commission has continuing powers and jurisdiction over each claim under this title.
>
> (2) Subject to paragraph (3) of this subsection, the Commission may modify any finding or order as the Commission considers justified.
>
> (3) Except as provided in subsection (c) of this section, the Commission may not modify an award unless the modification is applied for within 5 years after the last compensation payment.

According to the Revisor's Note this provision is "new language derived without substantive change from former Art. 101, § 40(b) through (d)." Since *Vest* arose prior to the recodification, the Court applied § 40, but noted that its decision was also applicable to the Act as it was recodified at the time. 329 Md. at 463 n.1 (1993).

Id. He received his last payment on April 5, 1982. *Id.* at 465. In 1988, after two back operations, Vest's doctor determined that he had a forty-five percent permanent partial disability of his back. *Id.* Vest presented a claim to Giant's insurance carrier seeking compensation, but the insurer denied his claim "on the basis that the statutory five-year limitations period had expired." *Id.* Exactly seven years from the date of his last compensation payment, Vest petitioned the Commission to reopen his claim to redetermine the nature and extent of his disability. *Id.* The Commission denied his request also on the grounds that the limitations period had expired. *Id.* The circuit court affirmed the Commission's order as did this Court. *Id.*

On appeal to the Supreme Court of Maryland, Vest argued that the five-year limitations period does not apply when the Commission orders compensation without a hearing, as it did in his case. *Id.* at 468. The Court rejected this interpretation of the provision, noting the problems that would arise from a total absence of a limitations period:

> [A]ny attempt to reopen a case based on an injury ten or fifteen years old must necessarily encounter awkward problems of proof, because of the long delay and the difficulty of determining the relationship between some ancient injury and a present aggravated disability. Another argument is that the insurance carriers would never know what kind of future liabilities they might incur, and would have difficulty in computing appropriate reserves.

Id. at 471 (quoting 2 A. Larson, *Workmen's Compensation* § 81.10, at 15-94 to 15-95 (Desk. ed. 1976)). These reasons mirror the rationale for adopting statutes of limitations. *See Matter of Russell*, 464 Md. 390, 407 n.11 (2019) ("The limitations period constitutes the quantity of time that a plaintiff has to bring an action against another before he or she is deemed to have waived the right to sue and acquiesced to the defendant's alleged

wrongdoing.") (internal citations omitted); *Bertonazzi v. Hillman*, 241 Md. 361, 367 (1966) ("Statutes of limitations are designed primarily to assure fairness to defendants on the theory that claims, asserted after evidence is gone, memories have faded, and witnesses disappeared, are so stale as to be unjust."). In light of this reasoning, the Court held that the five-year limitations period "begins to run after the last payment under an award of compensation[.]" *Vest*, 329 Md. at 474.

Since *Vest*, this Court and the Supreme Court have continued to characterize the five-year limitations period as a statute of limitations. *See Stevens v. Rite-Aid Corp.*, 102 Md. App. 636 (1994), *aff'd*, *Stevens v. Rite-Aid Corp.*, 340 Md. 555 (1995); *Gang v. Montgomery Cnty.*, 464 Md. 270 (2019). In *Stevens v. Rite-Aid Corp.*, the employee ("Stevens") sought to reopen her claim approximately six years after the last payment of compensation, but only two or three years after the last payment of penalties imposed by the Commission. *Id.* at 639. "The affirmative defense of limitations was raised by [employer/insurer]." *Id.* The Commission held that the claim was not barred by limitations, while the circuit court judge concluded that the claimant was barred by limitations from reopening her claims. *Id.*

On appeal to this Court, Stevens argued pursuant to LE § 9-736(c)[8] that she was estopped from reopening her case within the limitations period because after her

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[8] (c) *Estoppel or fraud.* – (1) If it is established that a party failed to file an application for modification of an award because of fraud or facts and circumstances amounting to an estoppel, the party shall apply for modification of an award within 1 year after:

(i) the date of discovery of the fraud; or

employer/insurer appealed from the penalty order, the Commission "lacked jurisdiction to hear any new disability claims while the appeal was pending." *Id.* at 402. We disagreed with this jurisdictional characterization of the statute in light of its language, emphasizing that "[s]ection 9-736(b)(3) . . . provides that the Commission may not modify an award 'unless the modification is *applied for* within 5 years after the last compensation payment.' (Emphasis supplied)." *Id.* We held that the doctrine of equitable estoppel did not apply because the delays did not prevent Stevens from filing her issues with the Commission, which could have tolled the statute of limitations. *Id.* "The ball was in [Stevens] court; she held it until after the final whistle and cannot now complain that her opponent did not do for her that which she could and should have done on her own behalf." *Id.* Further, we held that the employer/insurer did not represent that it would "refrain from asserting the defense of limitations." *Id.* at 403.

More recently, in *Gang v. Montgomery County*, our Supreme Court held that the Commission had the authority, pursuant to LE § 9-736, to reopen a compensation award and retroactively adjust the rate of compensation because the rate was erroneously set and the claimant filed his application "prior to the expiration of the five-year period of limitations." 464 Md. 270, 293 (2019). The Court distinguished *Gang* from *McLaughlin*, 206 Md. App. 242, noting "[i]n *McLaughlin*, however, the claimant's 'Petition to Reopen

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(ii) the date when the facts and circumstances amounting to an estoppel ceased to operate.

(2) Failure to file an application for modification in accordance with paragraph (1) of this subsection bars modification under this title.

for Worsening of Conditions' was barred by the statute of limitations in Section 9-736(b), because more than five years had transpired between the last payment of compensation and the application for modification." *Id.*

In light of this legislative history and our appellate courts' interpretation of the statute, we conclude that the term "jurisdiction" in LE § 9-736(b) refers to a statute of limitations. A statute of limitations is "[a] law that bars claims after a specified period; [more specifically] a statute establishing a time limit for suing in a civil case, based on the date when the claim accrued[.]" *Black's Law Dictionary* (11th ed. 2019), statute of limitations. *See Anderson v. United States*, 427 Md. 99, 117 (2012).

> A statute of limitations represents "a policy judgment by the Legislature that serves the interest of a plaintiff in having adequate time to investigate a cause of action and file suit, the interest of a defendant in having certainty that there will not be need to respond to a potential claim that has been unreasonably delayed, and the general interest of society in judicial economy."

Murphy v. Liberty Mutual Ins. Co., 478 Md. 333, 343 (2022) (quoting *Ceccone v. Carroll Home Services, LLC*, 454 Md. 680, 691 (2017)).

A statute of limitations defense "is an affirmative defense[9] that will be waived if not raised, and therefore is not jurisdictional." *Kumar v. Dhanda*, 198 Md. App. 337, 350 (2011). *See Brooks v. State*, 85 Md. App. 355, 365 (1991) ("Failure specially to plead limitations within the time set forth in the Rule [2-323] results in a waiver of the plea. . . . Because the plea is waivable, it necessarily follows that it is not jurisdictional.") (internal

[9] Md. Rule 2-323(g)(15).

citations omitted). Thus, we conclude that LE § 9-736(b) represents a waivable statute of limitations defense.

Further, even if the term "jurisdiction" in LE § 9-736(b) encompasses subject matter jurisdiction, the Commission still had subject matter jurisdiction over Perry's claim for permanent partial disability benefits. The main inquiry in determining subject matter jurisdiction or "fundamental jurisdiction" is whether or not the court or agency in question "had general authority over the class of cases to which the case in question belongs." *LVNV Funding LLC v. Finch*, 463 Md. 586, 609 (2019) (quoting *County Comm'rs v. Carroll Craft*, 384 Md. 23, 45 (2004)). The Workers' Compensation Act confers upon the Commission the authority to adjudicate claims for permanent partial disability benefits. *See e.g.*, LE § 9-302, 9-308 and 9-610.1; *see also Gang*, 464 Md. at 279 ("[The Commission's] jurisdiction includes the authority to approve claims, reopen cases, make determinations on employment relationships, determine liability of employers, award lump sum payments, approve settlements, award fees for legal services, funeral expenses, and medical services.") (quoting *Temporary Staffing, Inc. v. J.J. Haines & Co., Inc.*, 362 Md. 388, 398 (2001)).

Moreover, a statute of limitations issue does not deprive an adjudicatory body of subject matter jurisdiction. *See LVNV Funding LLC*, 463 Md. at 609 (quoting *Carroll Craft*, 384 Md. at 45) ("Indeed, this Court has repeatedly declined to hold void court or agency decisions that *exceeded statutory limits* but fell within the basic or fundamental jurisdiction of the court or agency.") (Emphasis added); *see also Eng'g Mgmt. Servs., Inc. v. State Highway Admin.*, 375 Md. 211, 241-42 (2003) (explaining that defenses such as statute of

limitations and untimely notice are waivable and therefore, concluding that the issue of untimely notice was "a factual question to be determined during a full hearing on the merits, and not a jurisdictional bar to the pursuit of a . . . claim."). Thus, even if LE § 9-736(b) encompassed subject matter jurisdiction, which we conclude it does not, the Commission would still have *fundamental* jurisdiction to hear a claim for modification of an award brought after the five-year statutory period had run. Of course, this would not preclude a party from *timely* raising an affirmative statute of limitations defense.

Finally, even if a timely statute of limitations defense did deprive the Commission of subject-matter jurisdiction, the Commission waived such a defense by not raising the issue at the Modification Hearing. Unlike in *Vest* and *Stevens*, where the employer/insurer pleaded the affirmative defense of statute of limitations and it was considered at the hearing for modification, here, Employer and Insurer failed to timely raise the affirmative defense, so it was not before the Commission at the Modification Hearing. *See Gang*, 464 Md. at 292 ("[The employer] fails to cite any authority in support of its argument that the breadth of the Commission's continuing jurisdiction is defeated by a party's failure to act.") As such, we conclude that the Commission had subject matter jurisdiction over Perry's modification claim.

II. The Commission Did Not Err as a Matter of Law by Ruling that Employer and Insurer Did Not Have Proper Grounds for a Rehearing Pursuant to LE § 9-726 and COMAR 14.09.03.14

A. Parties' Contentions

Employer and Insurer argue that they clearly met the grounds for a rehearing under LE § 9-726(d)(3). First, they assert that the payment log they discovered after the

Modification Hearing, showing that Perry was last paid compensation in May of 2014, constitutes new evidence. And second, they assert that the Commission's decision to uphold its award for permanent partial disability benefits, despite the statute of limitations running on that claim, was an error of law. Further, the appellants claim that they timely raised a statute of limitations defense by raising it in their Request for Rehearing.

Perry responds that the payment log was not newly discovered evidence under COMAR because the payment log was a business record of Employer and Insurer, and the they cannot credibly explain why they could not obtain their own payment log prior to the Modification Hearing. Further, Perry points out that Employer and Insurer concede that they did not raise their five-year limitations defense until after the 2020 Modification Hearing, and therefore any such defense was waived.

B. Analysis

LE § 9-726(d)(3) provides that "[t]he Commission may grant a motion for rehearing only on grounds of error of law or newly discovered evidence." Employer and Insurer requested a rehearing based on two grounds: first, "[i]nformation discovered after the hearing shows that temporary total disability was last paid on May 15, 2014 . . ." and second, "[p]er LE § 9-736(b), . . . the claimant filed her issues for nature and extent of permanent partial disability outside the 5 year window for modification. Therefore, the statute of limitations has run and the claimant is not entitled to any permanent partial disability by law."

With respect to a Request for Rehearing of a Commission decision, COMAR 14.09.03.14(C) provides:

> If the request is based on newly discovered evidence, the request shall describe specifically the newly discovered evidence and the reasons why that evidence was not known and could not have been discovered by due diligence at the time of the prior hearing.

Employer and Insurer claim that the payment log constitutes "newly discovered evidence." We disagree. As Perry points out, the payment log represents a business record of Insurer's (and Employer's) payment of compensation to Perry. Because this information existed before the 2020 Modification Hearing, and was readily available to the appellants, we agree that it could have been discovered through due diligence at the time of the prior hearing. Further, Employer and Insurer offer no explanation for why the evidence was not known and could not have been discovered with due diligence. As the payment log was in the control of appellants at the time of the Modification Hearing, we conclude that the Commission did not err in denying their request for a rehearing on this ground.

Nor did the Commission err as a matter of law in failing to grant a rehearing on the ground that the statute of limitations had run at the Modification Hearing on June 22, 2020. As discussed above, failing to assert a statute of limitations defense within the time provided in the rule amounts to a waiver of the defense. *See Brooks*, 85 Md. App. at 365. The record reflects, and Employer and Insurer concede, that they did not raise the statute of limitations issue at the Modification Hearing. Thus, the issue was not before the Commission. Nor did the Commission have a responsibility to raise the issue *sua sponte*. The Commission, pursuant to COMAR 14.09.03.14(F), has broad discretion in determining whether to grant or deny a rehearing. *See Gang*, 464 Md. at 279-80 ("Given the Commission's breadth of authority and discretion, we recognize its expertise in the

field of workers' compensation and consequently grant a degree of deference to the Commission's interpretation of the statute which it administers.") (internal quotation marks omitted). Thus, we conclude that the Commission did not err as a matter of law in ruling that Employer and Insurer did not have proper grounds for a rehearing based upon their untimely statute of limitations defense.

III. The Commission Did Not Err as a Matter of Law when it Failed to Rule that the Statute of Limitations Had Run on Further Compensation Pursuant to LE § 9-736(b).

A. Parties' Contentions

Finally, Employer and Insurer posit that whether or not they had proper grounds for a rehearing became moot once their request was granted and the parties were present at the Motion for Rehearing on July 7, 2021. At that point, they assert, the Commission's failure to rule on the statute of limitations was an error of law. Perry responds that there is no authority for this proposition, and that it ignores the fact that the Commission issued a corrected order denying the rehearing request.

B. Analysis

As discussed above, it was Employer and Insurer's responsibility to raise a statute of limitations defense at the Modification Hearing on June 22, 2020, and by failing to do so, they waived that affirmative defense. Employer and Insurer cite no authority for the proposition that the affirmative defense was timely raised, more than a year later, at the Motion for Rehearing. Instead, Employer and Insurer argue that by allowing this hearing to go forward, the Commission granted their Request for Rehearing and therefore, their statute of limitations defense was timely raised. We disagree. At the July 7 Motion for

Rehearing, the Commissioner clarified that "I didn't grant the request for rehearing. I set it in so that you could argue for me – argue it to me." Indeed, the Commissioner stated at this hearing that "I'm going to deny the motion." Following this motion, while the Commission *initially* issued an order granting the appellants' Request for Rehearing, two days later, the Commission rescinded that order and issued a corrected one *denying* the appellants' Request for Rehearing. As we are limited to reviewing those issues raised and decided on evidence before the Commission, *see Pressman*, 246 Md. at 415; *Cochran*, 471 Md. at 233-34, we decline to conclude that the Commission erred as a matter of law by failing to hold that the statute of limitations had run on further compensation, when the appellants ultimately failed to timely raise that issue.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. APPELLANT TO PAY THE COSTS.