

Circuit Court for Montgomery County  
Case No. 485475V

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND\*

No. 1042

September Term, 2022

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IN THE MATTER OF ANGELA SCOTT

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Graeff,  
Reed,  
Kenney, James A., III.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Kenney, J.

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Filed: October 3, 2023

\*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This case arises out of a workers’ compensation claim filed by appellant, Angela Scott, with the Workers’ Compensation Commission (the “Commission”) for injuries she suffered while working as a bus driver for the Board of Education of Montgomery County (the “County”). Following a hearing, the Commission determined that Ms. Scott was permanently partially disabled with a 38% industrial loss of her body, of which 28% was reasonably attributable to her work-related injuries and 10% attributable to pre-existing conditions. Ms. Scott filed an appeal in the Circuit Court for Montgomery County and elected a *de novo* trial by jury. The jury found that Ms. Scott was permanently partially disabled and that the Commission was “correct” in its apportionment of her injuries. Ms. Scott filed this timely appeal, raising two questions, which we have rephrased as follows:

1. Did the trial court err in precluding the jury from considering whether Ms. Scott was permanently totally disabled solely as a result of her work injury?
2. Did the trial court err in asking the jury to return a verdict as to whether the Commission was “correct” in finding that Ms. Scott had a permanent partial disability amounting to 38% industrial loss of her body, with 28% reasonably attributable to her work-related injuries and 10% due to pre-existing conditions?

Finding no error, we affirm.

### **BACKGROUND**

Ms. Scott, who was injured on March 1, 2019 while working as a school bus attendant for the County, filed a workers’ compensation claim with the Commission. At the hearing that followed, Ms. Scott maintained that she was permanently totally disabled as a result of her work injury. Alternatively, she claimed that she was permanently partially

disabled as a result of her work injury. The County contested her permanent total disability claim and argued that any partial disability was due, in part, to pre-existing conditions.

Following the hearing, the Commission issued an “Award of Compensation,” finding that Ms. Scott was “not permanently totally disabled[,]” but was permanently partially disabled “amounting to 38% industrial loss of use of the body” of which 28% was “reasonably attributable to the accidental injury (neck, 5%, left shoulder, 3%, back, 5%, and body (psychological), 15%)” and that 10% was “due to pre-existing conditions (back – 5% and body (psychological) – 5% unrelated)[.]”

Ms. Scott filed a *de novo* appeal in the circuit court and elected a jury trial.

***Motion to Preclude the Jury from Considering Whether Ms. Scott was Permanently Totally Disabled Solely as a Result of Her Work Injury***

Prior to trial, the County filed a motion asking the trial court to preclude the jury from considering whether Ms. Scott had been permanently totally disabled solely as a result of her work injury. The court heard argument on the motion at the beginning of trial. During argument, the County indicated that, “in a case like this” where a claimant argues that she is permanently totally disabled, the Commission, if it found the claimant totally disabled, would have to determine whether the disability was “solely” the result of the work accident or was partially due to some pre-existing condition. But, the County argued, the Commission did not make that determination in Ms. Scott’s case because its finding that Ms. Scott was not permanently totally disabled rendered the issue “moot.” For that reason,

the jury should not be presented with that question or any question beyond the Commission’s determination that Ms. Scott was not permanently totally disabled.<sup>1</sup>

Ms. Scott countered that, if the jury were to find that she was permanently totally disabled, it should be permitted to decide whether that disability was caused solely by her work injury. She acknowledged that the Commission did not make any express findings on causation in regards to permanent total disability, but it did expressly find that her permanent partial disability was caused, in part, by her work injury and, in part, by pre-existing conditions. That finding, she argued, constituted an “implicit” ruling on the cause of any permanent total disability because the Commission, had it found that she was permanently totally disabled, necessarily would have apportioned the cause of that disability as it did with her partial disability.

The trial court concluded that the Commission had not reached the issue of the cause of Ms. Scott’s claimed permanent total disability and therefore, that issue should not be presented to the jury. It reasoned that the best “way to deal with this” was on the verdict sheet and to ask the jury only whether Ms. Scott was permanently totally disabled. The court explained that, if the jury answered that question in the affirmative, the case would be remanded to the Commission to expressly determine whether the permanent total disability was caused solely by the work accident.

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<sup>1</sup> Ms. Scott indicates that the trial court did not give her counsel an opportunity to respond before ruling on the issue. That claim is not supported by the record.

***Verdict Sheet and Jury Instructions***

At the conclusion of trial, the parties further discussed how the issues would be presented to the jury by way of the verdict sheet. The proposed verdict sheet read as follows:

1. As of March 3, 2021, Angela Scott’s disability was:

\_\_\_\_\_

Permanent Partial

\_\_\_\_\_

Permanent Total

*If your answer to question #1 was “Permanent Total,” please go to question #2. If your answer to question #1 was “Permanent Partial,” skip question #2 and proceed to question #3.*

2. As of March 3, 2021, was Angela Scott’s “Permanent Total Disability” caused, at least in part, by the injuries sustained during the March 1, 2019 bus incident?

\_\_\_\_\_

YES

\_\_\_\_\_

NO

*If you answered question #2, you are finished. Stop here and notify the bailiff. Do not answer questions #3, #4, or #5.*

3. Was the Commission correct in finding that as of March 3, 2021, Angela Scott has “Permanent Partial Disability” amounting to 38% industrial loss of use of the body, 28% reasonably attributable to the accidental injury of March 1, 2019 (neck: 5%; left shoulder: 3%; back: 5%; body (psychological): 15%) and 10% due to pre-existing conditions (back: 5% and body (psychological): 5% unrelated)?

\_\_\_\_\_

Yes

\_\_\_\_\_

No

*If you answered “Yes” to question #3, you are finished. Stop here and notify the bailiff. If you answered “No” to question #3, please proceed to the next page to answer questions #4 and #5.*

4. As of March 3, 2021, Angela Scott suffered industrial loss of use of the body as a result of the accidental injury sustained on March 1, 2019, in the following proportions:

A. Neck: \_\_\_\_\_%

B. Left Shoulder: \_\_\_\_\_%

C. Back: \_\_\_\_\_%

D. Psychological: \_\_\_\_\_%

5. As of March 3, 2021, Angela Scott suffered industrial loss of the use of the body due to pre-existing conditions in the following proportions:

A. Back: \_\_\_\_\_%

B. Psychological: \_\_\_\_\_%

Ms. Scott objected to question #3 and asking the jury if the Commission’s finding was “correct.” She argued, citing *Board of Education for Montgomery County v. Spradlin*, 161 Md. App. 155 (2005), that, in a *de novo* jury trial it was not “the duty of the jury . . . to decide the correctness” of the Commission’s decision because the jury could reach a result different from that of the Commission. And though the Commission’s findings are presumptively correct, they are just one piece of evidence that the jury should consider, during a *de novo* trial, in reaching an independent decision based on all the evidence. In her view, asking the jury if the Commission was “correct,” suggested a clearly erroneous standard of proof that transformed the *de novo* jury trial into a routine administrative appeal.

The trial court ultimately decided to pose question #3 as written on the proposed verdict sheet:

Okay. Well, I think, in my view of this, the jury needs to be told they have a choice to make, was [Ms. Scott] permanently partially disabled or permanently totally disabled, and if they decide permanently total, there's nothing more they need to do, we're going to send it back to the Commission. If they find – if they agree that she's only permanently partially disabled, then they have to decide whether or not the apportionment that was done by the – they have to decide what the apportionment was.

So your burden is to show that the Commission was incorrect in that. So that's why, instead of – instead of putting it in the negative, I put it in the positive, which is, do you agree that the Commission was correct in finding these apportionments; and then, if not, you go to 4 and 5 and tell us what you think it is. So I'm not sure what – I'm not sure there's a clearer way to present them with the questions that they need to decide.

Later, but before presenting the verdict sheet to the jury, the trial court instructed the jury as follows:

In this case it will be your duty to return your verdict in the form of written answers to the written questions which are submitted to you by the Court. Your answers will constitute your verdict. Each answer is to be written in the space provided after each question. Before making each answer, all of you must agree upon it. It is your duty to answer each of these questions in accordance with the evidence in the case.

\* \* \*

So this instruction deals with what we call the burden of proof. This case has been heard and decided by the Workmen's Compensation Commission. The employee Ms. Scott . . . is appealing the decision of the Commission. The Commission determined that Ms. Scott has permanent partial disability under other cases amounting to 38 percent industrial loss of use of the body, and that was broken down into a 28 percent, which is reasonably attributable to the accidental injury, and that was broken down further to 5 percent related to the neck, 3 percent related to the left shoulder, 5 percent related to the back, and 15 percent related to body, or what we call psychological. It also found that 10 percent of that industrial loss of use of the body was due to pre[-]existing conditions, 5 percent related to the back and 5 percent related to body or psychological. The second thing that the Commission found was that Ms. Scott is not permanently totally disabled.

This decision is presumed to be correct. The employee Ms. Scott has the burden of proving by a preponderance of evidence that the decision made by the Compensation Commission is wrong. In meeting this burden, the employee Ms. Scott may rely on the same evidence, less evidence, or more evidence than was presented at the Commission.

So the party who asserts a claim or affirmative defense has the burden of proving it by what we call the preponderance of evidence. In order to prove something by a preponderance of the evidence, a party must prove that it is more likely so than not so. In other words, a preponderance of evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces in your minds a belief that it is more likely true than not true.

In determining whether a party has met the burden of proof, you should consider the quality of all the evidence regardless of who called the witness or introduced the exhibit and regardless of the number of witnesses which one party or the other may have produced. If you believe that the evidence is evenly balanced on an issue, then your finding on that issue must be against the party who has the burden of proving it.

After closing arguments, the jury was given the verdict sheet and excused for deliberations. The jury returned a verdict of “Permanent Partial” on question #1 and a verdict of “Yes” on question #3. Per the instructions on the verdict sheet, the jury did not return a verdict on any of the other questions.

Ms. Scott noted this timely appeal. Additional facts will be supplied as needed in the discussion below.

## **DISCUSSION**

### **I.**

#### ***Parties’ contentions***

Ms. Scott contends that the trial court erred and abused its discretion “in determining that the Commission did not implicitly decide [she] did not suffer a permanent total

disability solely as a result of the work injury.” In doing so, she focuses on its decision that the jury should not be allowed to consider causation because the Commission did not make an explicit finding as to the cause of an alleged permanent total disability. Citing *Trojan Boat Co. v. Bolton*, 11 Md. App. 665 (1971), she argues that the court failed to recognize that the Commission can make “implicit” decisions that can be considered by the jury.

The County contends that the Commission would not have reached the issue of whether the claimed permanent total disability was solely the result of the work injury because it expressly found that Ms. Scott had not suffered a permanent total disability.

**[Id.]**

### *Analysis*

When a disability claim is filed following a work accident, the Commission may find a claimant’s resulting disability to be temporary or permanent and if permanent, to be “permanent total” or “permanent partial.” *Weather Tight Constr. Co. v. Buckler*, 129 Md. App. 681, 685 (2000). When, as here, the claimant’s disability is not one of the scheduled injuries set forth in Md. Code, Labor and Employment § 9-627, the Commission must decide the extent to which the disability was caused by the work accident and award compensation to the claimant based on the percentage by which the claimant’s body was impaired by that accident. *Sears, Roebuck and Co., Inc. v. Ralph*, 340 Md. 304, 311-12 (1995).

A claimant dissatisfied with the Commission’s decision may seek review in the circuit court in one of two modalities. *Schwan Food Co. v. Frederick*, 241 Md. App. 628,

644-45 (2019). The case may be submitted to the court solely on the record presented to the Commission, or the claimant may request a *de novo* evidentiary hearing before a judge or a jury. *Id.* The first is similar to most other administrative appeals; the court reviews the record to determine whether the Commission’s decision was legally correct and supported by the evidence. *Spradlin*, 161 Md. App. at 167-71. In the second, a fresh, *de novo* evidentiary hearing is held before a fact-finder tasked with making independent findings of fact based on the evidence presented at the evidentiary hearing. *Id.* at 171-75.

Where, as here, the claimant chooses a *de novo* jury trial, the jury “does not, as might an ordinary jury, render an ultimate verdict but only makes specific findings of fact on specific issues that are carefully framed and submitted to it.” *Id.* at 190. And, generally speaking, the issues of facts submitted to the fact-finder should “be confined to the ultimate issues involved in the finding of the Commission from which the appeal is taken[.]” *Id.* at 191 (emphasis omitted) (quoting *Schiller v. Baltimore & Ohio R.R. Co.*, 137 Md. 235, 244 (1920)). In other words, “[a]ny factual question that is to be the subject of *de novo* relitigation must first have been a factual issue that was actually decided by the Commission.” *Id.* at 177. Although factual issues that are subject to *de novo* fact finding are usually decided explicitly by the Commission, the Commission can also make an “implicit decision.” *Trojan*, 11 Md. App. at 671-73. An implicit decision “is one that, in the logical process of disposing of the proceeding, the Commission encountered and solved, although without explicit mention of it in the record.” *Id.* at 671.

In *Trojan Boat*, this Court addressed the difference between an “implicit decision” by the Commission, which could be the subject of *de novo* fact finding, and a “moot issue,”

which could not. *Id.* at 671-73. In that case, the employer challenged the claimant’s compensable injury claim on the grounds that no injury had occurred and that, even if it had, there was no evidence that the injury was caused by a work accident. *Id.* at 667-68. The Commission, finding that the claimant had not suffered an accidental injury in the course of employment, did not reach the issue of causation. *Id.* at 667. The claimant appealed to the circuit court where a jury found that the claimant had suffered an accidental injury. *Id.* When the case was then remanded to the Commission, it found that the injury was caused by a work injury and awarded the claimant compensation. *Id.* at 667-68. The employer then appealed to the circuit court. The claimant moved to dismiss the appeal because causation could have been raised in the earlier appeal and was now barred by *res judicata*. *Id.* at 668. The circuit court dismissed the appeal, and the employer noted an appeal in this Court. We held that dismissal was inappropriate because the issue of causation, raised in the second appeal, had been rendered moot by the Commission’s initial decision that the claimant had not suffered an accidental injury. *Id.* at 671-73. In doing so, we rejected the claimant’s argument that the Commission had “implicitly” determined the issue of causation in that decision:

[A]s soon as the Commission decided the injury was not accidental and in the course of employment, the issues of causation and nature of the injury became moot. The issue was obviously not implicitly decided by the Commission because in the logical process of disposing of the claim by deciding it was not accidental in the course of employment, the Commission did not reach the issue of causation.

*Id.* at 672.

Turning to the instant case, we hold that the trial court did not err in precluding the jury from considering whether the claimed permanent total disability was solely a result of a work injury. The Commission would not have implicitly decided whether Ms. Scott’s claimed permanent total disability was solely the result of an accidental work injury because it expressly found that Ms. Scott was not permanently totally disabled. As in *Trojan Boat*, the issue of “causation and nature of the injury” became moot once the Commission determined that Ms. Scott was not permanently totally disabled. Therefore, the court did not abuse its discretion or err as a matter of law in refusing to present that issue to the jury.

But even assuming, *arguendo*, that the court’s decision was error or an abuse of discretion, we would hold that it was harmless. The Commission expressly found that Ms. Scott was not permanently totally disabled. This was a factual finding by the Commission that the jury could and did decide.<sup>2</sup> It found instead that her disability was Permanent Partial. Thus, even if the court had permitted the jury to decide whether a permanent total disability was solely the result of an accidental work injury, the jury, by deciding that the

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<sup>2</sup> The verdict sheet reads as follows:

1. As of March 3, 2021, Angela Scott’s disability was:

Permanent Partial

Permanent Total

If it found “Permanent Total” it was then to decide whether that disability was “caused, at least in part, by the injuries sustained during the March 1, 2019 bus incident[.]”

disability was partial and not total, would not “in the logical process of disposing of the claim” have reached the issue. *Id.* at 672.

## II.

### *Parties’ contentions*

Ms. Scott contends that the court erred when, in question #3 on the verdict sheet, it asked whether the Commission was “correct” in its findings regarding the permanent partial disability determination. She asserts that the question violated her right to a *de novo* trial by “effectively ha[ving] the jury review the Commission’s decision for clear error and not consider the issues *de novo*.” As she sees it, the phrasing of the question “erroneously elevated the role of the Commission’s Order and effectively declared that the Commission’s Order was an ultimate finding of fact that the jury must answer first before proceeding onto the actual question of the nature and extent of [her] permanent disability[.]”

The County contends that the court’s phrasing of the question did not constitute an error or an abuse of discretion. But even if it did, Ms. Scott “failed to demonstrate prejudice.” It argues that the verdict sheet question “enabled the jury to reach a different result” by finding the Commission’s decision incorrect and to assign different percentages to those assigned by the Commission under questions #4 and #5. As it sees it, question #3 had no impact on the result.

### *Analysis*

A “true” *de novo* trial, ordinarily, “would put all parties back at ‘square one,’ to begin again before the circuit court just as if the adjudication appealed from had never

occurred.” *Spradlin*, 161 Md. App. at 189. “In what is essentially a trial *de novo*” of an appeal of a Commission decision, however, the Commission’s decision continues to play an integral part in the jury’s verdict. *Id.* (quotation marks omitted). Because it is presumptively correct and the challenger has the burden of proof, the Commission’s decision “1) may be offered as substantive evidence . . . ; 2) may be the subject of a jury instruction . . . ; 3) may, if necessary, satisfy the burden of initial production . . . ; and 4) will sometimes shift the allocation of the burdens of proof (both production and persuasion) at the *de novo* trial.” *Id.* See also *Schwan Food*, 241 Md. App. at 644-45. And because the Commission’s decision is *prima facie* correct and can be the factual tie breaker “if the mind of the fact finder (judge or jury) is in a state of even balance[,]” a jury should be informed “about precisely what it was that the Commission decided.” *Spradlin*, 161 Md. App. at 205 (quotation marks and citation omitted). To that end, the judge should inform the jury that the Commission’s decision is relevant, that the decision is presumptively correct, and that the jury is free to give the decision whatever weight it desires. *Id.* The instructions should, however, “avoid suggesting that the Commission’s decision is binding upon the finder of fact.” *Holman v. Kelly Catering, Inc.*, 334 Md. 480, 494 (1994) (quotation marks and citation omitted).

As previously discussed, during a *de novo* jury trial, the jury does not render the ultimate verdict; it “makes specific findings of fact on specific issues that are carefully framed and submitted to it.” *Spradlin*, 161 Md. App. at 190. Under the Maryland Rules, a trial court has the discretion to design the jury’s verdict sheet and to format the jury’s specific findings of fact. *Applied Indus. Techs. v. Ludemann*, 148 Md. App. 272, 287

(2002). “Consequently, a court’s use of a particular format will not be reversed absent an abuse of discretion.” *Id.* It is an abuse of discretion “when the court acts without reference to any guiding rules or principles, where no reasonable person would take the view adopted by the court, or where the ruling is clearly against the logic and effect of facts and inferences before the court.” *Brown v. State*, 470 Md. 503, 553 (2020) (internal quotation marks omitted) (quoting *Alexis v. State*, 437 Md. 457, 478 (2014)).

Against that backdrop, we hold that the trial court did not abuse its discretion in asking the jury to decide whether the Commission’s decision was “correct.” Prior to presenting the jury with the verdict sheet, the court informed the jury that the Commission’s decision was presumed to be correct and that Ms. Scott had the burden of proving by a preponderance of the evidence that the decision was wrong. We therefore fail to see how question #3, which was essentially a restatement of the court’s prior and correct instructions, could be an abuse of discretion. As worded, the question did not suggest any particular answer or imply that the Commission’s decision carried any additional weight beyond being presumptively correct. *See Applied Indus.*, 148 Md. App. at 287-88 (holding that the trial court did not abuse its discretion by asking, on the verdict sheet, whether “the Commission was correct in determining that Claimant did not sustain the two alleged accidental injuries in the course of his employment”). In short, we are not persuaded that the court’s framing of the question “elevated the role” of the Commission’s decision and effectively declared the decision to be “an ultimate finding of fact that the jury must answer first before proceeding onto the actual question of the nature and extent of [her] permanent disability[.]”

In other words, we disagree with Ms. Scott’s contention that the wording of question #3 caused the jury to review the Commission’s decision for clear error rather than *de novo*. The court clearly explained in its instructions to the jury that it was Ms. Scott’s burden to establish, by a preponderance of the evidence, the incorrectness of the Commission’s decision. The court, in those instructions, provided a detailed explanation of what that meant. The court explained that to meet that burden, she could “rely on the same evidence, less evidence, or more evidence than was presented at the Commission[,]” and that the jury was free to consider any and all of the evidence presented at the trial in reaching a verdict. By then asking the jury to determine whether the Commission’s decision was “correct,” the court was asking the jury whether, based on a preponderance of the evidence, the Commission’s causal allocation of Ms. Scott’s permanently partial disability should be accepted or rejected. At no point did the court even imply, much less indicate, that the Commission’s decision, or any other factual finding by the Commission, should be reviewed for clear error. The question asked the jury to decide a single factual issue based on all the evidence presented at trial. In doing so, the jury was free to give the Commission’s decision whatever evidentiary or persuasive weight it chose and to come to a different conclusion than the Commission did in the allocation of the industrial loss of use to the accidental injury.

The court’s question #3, when considered in conjunction with the court’s jury instructions, simply asked the jury whether it agreed with the Commission’s determination

or whether, based on all the evidence, Ms. Scott had overcome the decision’s presumptive correctness.<sup>3</sup> Ms. Scott’s right to a *de novo* trial was not violated.

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

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<sup>3</sup> As this Court has said, a jury is “presumed to understand and follow the court’s instructions.” *Whittington v. State*, 147 Md. App. 496, 534 (2002); *see also Dorsey v. State*, 185 Md. App. 82, 110 (2009). And as our Supreme Court has observed, “our legal system necessarily proceeds upon the assumption that jurors will follow the trial judge’s instructions[.]” *State v. Moulden*, 292 Md. 666, 678 (1982).