Circuit Court for Prince George's County
Case No. CAL15-16166

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1209

September Term, 2016

PRINCE GEORGE'S COUNTY BOARD OF EDUCATION

v.

ANTHONY BUTLER

Woodward, C.J.,
Nazarian,
Leahy,

JJ.

Opinion by Woodward, C.J.

Filed: July 10, 2018

Appellee, Anthony Butler, was employed as a warehouseman and truck driver for appellant, the Prince George's County Board of Education, ("Board" or "employer"). On July 13, 2011, he was injured on the job. Ironically, Butler was injured while making a delivery to the Office of Risk Management, where, with the assistance of an employee in that Office, he completed and filed a Prince George's County Public Schools, "Workers' Compensation—Report of Injury." Relying on his employer's assurance that "everything was taken care of[,]" Butler failed to file a workers' compensation claim with the Maryland Workers' Compensation Commission ("Commission") until September 2, 2014.

The Commission ruled that Butler's claim was time barred by the two-year statute of limitations and denied his defense of estoppel. Butler appealed the Commission's decision to the Circuit Court for Prince George's County, which held a *de novo* bench trial on July 27, 2016. The court reversed the decision of the Commission, ruling that Butler had established an estoppel defense under Maryland Code (1991, 2016 Repl. Vol.), § 9-709 of the Labor and Employment Article ("LE"), and, therefore, the statute of limitations did not bar his claim.

On appeal to this Court, the Board presents the following questions for our review, which we have rephrased as follows:[1]

[1] The Board's issues presented in its brief are as follows:

1. Whether the Circuit Court erred, as a matter of law, when it found that Butler successfully established an estoppel defense against the Statute of Limitations.

2. Whether the Circuit Court erred, as a matter of law, when it found that Butler's claim was not barred by the Statute of Limitations.

1. Did the trial court err when it found that Butler's claim was not barred by the statute of limitations?

2. Did the trial court err when it found that the defense of estoppel was established?

For the reasons discussed below, we affirm.

BACKGROUND

Butler has worked for the Board for 30 years as a warehouseman and truck driver. On July 13, 2011, Butler fell backward and hit his head on the concrete while delivering a desk to the Board's Risk Management Department. Sherry Brady, an employee in the Risk Management Department who witnessed the fall, assisted Butler in filing out the First Report of Injury. Butler was told that his supervisor "w[as] going to send it to the workman's comp office." Butler testified that he was not told he had to fill out any other forms and that he "was told that everything was taken care of."

Butler's supervisor, Dallas Pinkney, called him later at his home and told him to report to Concentra Medical Center to be examined by a doctor. Following Pinkney's instructions, Butler reported to Concentra and did not return to work for approximately two weeks. He took sick leave and was paid for those two weeks. Butler testified that, when he returned to work, his supervisor reiterated "that everything was taken care of." He relied upon his supervisor's statements, he attested, because "I have known him for years. I rely upon what he told me."

Subsequently, it was discovered that as a consequence of the fall on July 13, 2011, the shunt in Butler's head broke in four places. On March 24, 2012, Butler underwent surgery at Georgetown Medical Center to repair the damaged shunt in his head. Sometime

after his surgery, Butler discovered that his medical bills were not getting paid. He approached his employer who, again, "assured [him] that everything was taken care of." In 2013, though, Butler continued to receive medical bills, so he decided to seek counsel. Butler's counsel informed him that everything was not, in fact, taken care of,[2] and filed Butler's workers' compensation claim form on September 2, 2014.

Based on the statute of limitations, the Board contested Butler's workers' compensation claim. On April 27, 2015, a hearing was held before the Commission. Butler raised the defense of estoppel. On May 1, 2015, the Commission disallowed Butler's claim for compensation, stating that the "claim [was] barred by limitations and [the] defense of estoppel is denied[.]" On May 27, 2015, Butler filed a petition for judicial review and jury demand in the Circuit Court for Prince George's County. Thereafter, Butler waived a trial by jury. On July 27, 2016, the court held a *de novo* bench trial in which Butler testified as the only witness. At the conclusion of the trial, the court made the following findings:

> That [Butler] was quote, within quotation marks, assured that quote everything had been taken care of. And that it wasn't until months later when he discovered bills which he believes are related to the injury sustained that the issue came.
>
> The Court finds based on what happened in this case that [Butler] did rely upon the communications based by the employer. That I

[2] The record does not reveal when, in 2013, Butler sought legal counsel and learned that he was required to file a workers' compensation claim, but his counsel represented at least three times before the circuit court and again to this Court that this occurred within one year of September 2, 2014. The Board has not suggested otherwise and states in its own brief to this Court that there is "no genuine dispute as to any material facts[.]" On this frugal, but otherwise uncontroverted factual foundation, we cannot say that the trial court erred in its implicit conclusion that Butler continued to rely on his employer's assurances until he was advised to the contrary by counsel.

> don't necessarily think the employer did anything wrong per se in terms of that they were intending to mislead [Butler].
>
> I just think that they were talking about different things, and that the issue didn't come up until bills weren't being paid, and I am assuming that the only reason that there is even an issue is because the employer didn't want to pay those bills.
>
> And whether or not the employer is on the hook for those bills, is a question that I think equity says should be answered. So the case is remanded to the commission to give [Butler] an opportunity to present his claim.

On August 12, 2016, the trial court filed an Order reversing the decision of the Commission and remanding for further proceedings, stating that the claim was not barred by the statute of limitations because the defense of estoppel was established. On August 15, 2016, the Board filed a timely notice of appeal.

STANDARD OF REVIEW

Two "modalities" of appeal are available to a party from a decision by the Commission: "[t]he first is an unadorned administrative appeal," and the second is a *de novo* appeal, otherwise referred to as an "administrative appeal plus." *See Stine v. Montgomery Cty*, ___Md. App. ___, ___, No. 578, Sept. Term 2017, slip op. at 6 (filed June 1, 2018) (internal quotation marks and citation omitted). Butler opted for the administrative appeal plus option, requiring that we review the decision by the circuit court following a *de novo* trial pursuant to LE § 9–745(d).

As Judge Molyan explained in *Bd. of Educ. for Montgomery Cty. v. Spradlin*, 161 Md. App. 155, 172-73 (2005):

> The most salient characteristic of the essential trial *de novo*, or "plus" option, is that it is diametrically different from the routine

> administrative appeal. *General Motors v. Bark*, 79 Md. App. [68, 73 (1988)] ("*By way of dramatic contrast*, an appeal to the circuit court from a decision of the Workers' Compensation Commission is totally different. . . . *[B]y way of significant departure* from the administrative agency norm, [§ 9-745(d)] . . . goes on to provide *a vastly broader recourse* for the appellant in a Workers' Compensation case.") (Emphasis supplied)[.]

(Some alterations in original). In *Egypt Farms, Inc. v. Lepley*, 49 Md. App. 171, 176 (1981), this Court further explained the broad fact-finding authority of the trial court on *de novo* review of a decision by the Commission:

> [T]he reviewing court has very broad authority, notwithstanding the prima facie correctness of the administrative decision. . . . The court (or jury), in other words, is not so bound by the Commission's fact findings as is normally the case in administrative appeals, but is free to weigh the evidence (and the inferences from it) and reach entirely opposite conclusions.

(Citations omitted). Accordingly, we review the decision of the circuit court.

DISCUSSION

A. Statute of Limitations

The requirements for a filing a claim with the Commission for an accidental personal injury are set out in LE § 9-709. The relevant portion of this statute states:

> (a) *Filing claim — In general; authorization for release of relevant medical information.* — (1) Except as provided in subsection (c) of this section, if a covered employee suffers an accidental personal injury, the covered employee, **within 60 days after the date of the accidental personal injury, shall file with the Commission**:
>
> (i) a claim application form; and
>
> (ii) if the covered employee was attended by a physician chosen by the covered employee, the report of the physician.
>
> (2)(i) A claim application form filed under paragraph (1) of this subsection shall include an authorization by the claimant for the release, to the claimant's attorney, the claimant's employer, and the insurer of the claimant's employer, or an agent of the claimant's

attorney, the claimant's employer, or the insurer of the claimant's employer, of medical information that is relevant to:

1. the member of the body that was injured, as indicated on the claim application form; and

2. the description of how the accidental personal injury occurred, as indicated on the claim application form.

(ii) An authorization under subparagraph (i) of this paragraph:

1. includes the release of information relating to the history, findings, office and patient charts, files, examination and progress notes, and physical evidence;

2. is effective for 1 year from the date the claim is filed; and

3. does not restrict the redisclosure of medical information or written material relating to the authorization to a medical manager, health care professional, or certified rehabilitation practitioner.

(b) *Failure to file claim.* — (1) Unless excused by the Commission under paragraph (2) of this subsection, failure to file a claim in accordance with subsection (a) of this section bars a claim under this title.

(2) The Commission may excuse a failure to file a claim in accordance with subsection (a) of this section if the Commission finds:

(i) that the employer or its insurer has not been prejudiced by the failure to file the claim; or

(ii) another sufficient reason.

(3) Notwithstanding paragraphs (1) and (2) of this subsection, if **a covered employee fails to file a claim within 2 years after the date of the accidental personal injury, the claim is completely barred.**

LE § 9-709(a)-(b) (bold emphasis added). An employer is not required to file a workers' compensation claim form with the Commission on behalf of the employee after receiving notice of the accidental personal injury. *DeBusk v. Johns Hopkins Hosp.*, 105 Md. App. 96, 103 (1995), *aff'd*, 342 Md. 432 (1996).

Butler was injured on July 13, 2011, and had sixty days after the injury to file a claim application form and a physician's report with the Commission. *See* LE § 9-709(a)(1). The Board filed Butler's First Report of Injury form with the Commission on

the same date shortly after the accident. Because Butler was injured on July 13, 2011, and did not file his claim until September 2, 2014—approximately three years and two months later—Butler's claim would have been barred under LE § 9-709(b)(3), but for our determination that the defense of estoppel has been met. We shall explain below.

B. Estoppel

LE § 9-709(d) sets forth "estoppel or fraud" in the context of failure to file a workers' compensation claim form as follows:

> (d) *Estoppel or fraud.* — (1) **If it is established that a failure to file a claim in accordance with this section was caused** by fraud or **by facts and circumstances amounting to an estoppel, the covered employee shall file a claim with the Commission within 1 year after:**
>
> (i) the date of the discovery of the fraud; or
>
> **(ii) the date when the facts and circumstances that amount to estoppel ceased to operate.**
>
> (2) Failure to file a claim in accordance with paragraph (1) of this subsection bars a claim under this title.

LE § 9-709(d) (bold emphasis added).

The Court of Appeals has instructed that the

> facts and circumstances to create an estoppel under this statute must be produced either by a principal or an agent who has real or apparent authority to speak for the principal in compensation claims. . . . [The person] must have authority to represent the employer in the specific matter of filing claims or he [or she] must be in a position which would reasonably create in the mind of the claimant an inference that he [or she] had such authority.

Summit Timber Products Co. v. McKenzie, 203 Md. 41, 47-48 (1953). "In order to establish estoppel under LE [§] 9-709(d), on the basis of representations made by an employer/insurer, a workers' compensation claimant must produce evidence that he

actually and reasonably relied upon the representation." *Griggs v. C & H Mech. Corp.*, 169 Md. App. 556, 575 (2006).

The Board contends that the facts of the case do not support a finding of estoppel. The Board argues that Butler was unaware of the requirement that he had to file a claim with the Commission; thus "his brief interaction with the Office of Risk Management and any reliance on the same did not induce him to *not* timely file a claim with the Commission." (Emphasis in original). Even if estoppel is established, the Board continues, the facts or circumstances amounting to estoppel ceased to operate the day after the injury occurred, because "the day of the injury was his first and last communication with them concerning his injury."

Butler maintains on appeal that estoppel applies under LE § 9-709, because he relied on the assurances from Sherry Brady in the Office of Risk Management and his direct supervisor that "everything was taken care of." He suggests that the facts of this case are nearly "identical" to those in *C & P Telephone Co. of Maryland v. Scott*, 77 Md. App. 121 (1988). We agree.

In *Scott*, the employee was injured on February 15, 1983, after falling on the employer's parking lot. *Id.* at 123. The employee promptly notified "her supervisor, Shirley Palmer, who took [the employee] to the hospital." *Id.* After the trip to the hospital, Palmer and the employee called the employer's "benefits office and informed them of the incident." *Id.*

> When [the employee] asked Palmer if there was anything she needed to do, if there were any forms that she needed to fill out, Palmer responded that the forms were coming, that she would fill them out,

> and that everything would be taken care of. In response to a similar inquiry from [the employee's] mother, Palmer repeated that everything would be taken care of.

Id. "[F]or more than two years, [the employer] paid [the employee's] medical bills and lost wages." *Id.* The employee had no knowledge of workers' compensation and relied on her employer's assurances that everything would be taken care of and thus did not file a workers' compensation form with the Commission until November 1, 1985, over twenty-eight months after the employer filed the Employer's First Report form. *Id.*

On appeal, this Court, construing the predecessor statute, explained:

> "[F]ailure of an employee to file a claim for compensation within two years from the date of the accident shall constitute a complete bar" to that claim. Where, however, the employee's failure to file a claim "was induced or occasioned by fraud, or by facts and circumstances amount to an estoppel," the employee has one additional year from the time that the fraud is discovered or the facts and circumstances amounting to an estoppel cease, within which to file a claim.

Id. (quoting Maryland Code, (1957, 1981 Repl., 1984 Cum. Supp.) Article 101, § 39(c)). This Court further expounded:

> Equitable Estoppel, as that term is used in the Workers' Compensation Act, "is the effect of the voluntary conduct of a party whereby he is absolutely precluded both at law and in equity from asserting rights . . . against another person who has in good faith relied upon such conduct and has been led thereby to change his position for the worse."

Id. at 124 (quoting *Patapsco and Black Rivers R.R. Co. v. Davis*, 208 Md. 149, 155 (1955)). "It is not necessary that the party's conduct be egregious or have been done intentionally to mislead, however." *Id.* "If the representation is believed, and relied upon as the inducement for action by the party claiming the benefit of estoppel, the estoppel may be

asserted." *Id.* We held that there was sufficient evidence for the issue of estoppel to be submitted to the jury. *Id.* at 125.

In so holding, we noted that there was unrefuted testimony by the employee that after the accident the employee asked "if there was anything she needed to do[,]" "she was assured by her supervisor that everything would be taken care of and that she needed not worry about anything." *Id.* Further, the employer paid her medical bills and compensated her for lost wages for more than two years after the injury occurred. *Id.* This Court determined that the jury could have reasonably found that the employee's supervisor's statements taken together with the employer's conduct "were such as to induce [the employee] to believe that all matters relating to a compensation claim would be taken care of." *Id.* Thus, this Court determined that the trial court did not err in submitting the issue to the jury. *Id.*

At the time of the accident in the instant case, Butler did not know that a claim form had to be filed with the Commission or that it had to be filed within a certain time limit. Within a few days of his injury on July 13, 2011, the Board filed a First Report of Injury form with the Commission. Butler received assurances on the day of his injury from Brady, who works in the Risk Management Department, that "everything was taken care of." Butler testified that after he returned to work following his surgery, his supervisor, Pinkney, again told him "that everything was taken care of." He explained to the trial court that he relied upon his supervisor's statements, because "I have known him for years. I rely upon what he told me." Then, after Butler discovered that his bills were not getting paid, he notified his employer, and yet again he was "assured [ ] that everything was taken

care of."

It was not until Butler sought out counsel in 2013, because his medical bills were not being paid by his employer, that he learned that a claim form still needed to be filed with the Commission. Butler testified that he had never seen a claim form until his attorney filled out one on his behalf. Although the Board's statements were not intentional misrepresentations, the Board caused Butler to act to his detriment by not filing a claim form. As the trial court observed, "I don't necessarily think the employer did anything wrong per se in terms of that they were intending to mislead [Butler] . . . I just think that they were talking about different things[.]"

We hold that the evidence before the trial court was sufficient to support its determination that the Board was equitably estopped under LE § 9-709 from denying Butler's claim because he relied on the communications by the Board "to change his position for the worse." *Scott*, 77 Md. App. at 124 (internal quotation marks and citation omitted). Brady, as an employee in the Risk Management Department, and Pinkney, as Butler's long-term supervisor, were both in positions to create a reasonable belief in Butler's mind "that everything was taken care of." Those assurances continued even after Butler discovered that his bills were not getting paid.

We also reject the Board's contention that the facts and circumstances that amounted to estoppel ceased to operate the day after the injury occurred. Rather, we conclude, on the record before the trial court, that the circumstances that amounted to estoppel ceased once Butler was advised by his attorney that, contrary to the assurances

that he had received, everything was not taken care of regarding the problem with his medical bills, and he needed to file a claim with the Commission.

We, therefore, affirm the trial court's determination that the defense of estoppel was established, as well as its decision to remand the case to the Commission for further proceedings.

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