

Circuit Court for Baltimore City  
Case No. 24-C-19-001998

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1637

September Term, 2019

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LINDA SANDERS

v.

MARYLAND STATE RETIREMENT &  
PENSION SYSTEM

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Graeff,  
Nazarian,  
Arthur,

JJ.

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Opinion by Graeff, J.

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Filed: October 21, 2020

\*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.

On February 25, 2016, Linda Sanders, appellant, applied to the State Retirement and Pension System (“RPS”) for ordinary and accidental disability retirement benefits due to a shoulder injury she suffered as a school bus driver with Harford County Public Schools. The RPS Medical Board recommended approving her request for ordinary disability retirement benefits and denying her claim of accidental disability retirement benefits. The RPS Board of Trustees (“Board”) accepted this recommendation and denied her request for reconsideration of the accidental disability claim.

Ms. Sanders appealed to the Office of Administrative Hearings. An administrative Law Judge (“ALJ”) held a hearing on December 7, 2018. The ALJ affirmed the Board’s decision to deny Ms. Sanders’ claim for accidental disability on the ground that her inability to work was not the natural and proximate result of the workplace accident on October 7, 2014, because she had preexisting, degenerative shoulder arthritis. Ms. Sanders filed a petition for judicial review in the Circuit Court for Baltimore City, which affirmed the ALJ’s decision.

On appeal, appellant presents several questions for this Court’s review, which we have combined, as follows:

1. Did the ALJ err in finding that Ms. Sanders was ineligible for accident disability retirement benefits?
2. Did the ALJ err in failing to follow the treating physician’s preference rule?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **I.**

#### **Accidental Retirement Disability Claim**

Ms. Sanders was a school bus driver for students with special needs with Harford County Public School for 16 years. On October 7, 2014, Ms. Sanders, age 70, was securing the wheelchair of a very large 17-year-old girl to the floor of the bus when the student suddenly “yanked up on [her] hair” and would not let go. While still facing the floor in a kneeling position, Ms. Sanders reached up with her left arm to attempt to disentangle the girl’s fingers from her hair and to protect herself. The student continued to “yank” her head “violently” in a “whiplash” motion for approximately 15 minutes as Ms. Sanders shouted for help. A teacher and the bus attendant, who had been inside the school building and were unable to hear Ms. Sanders’ cries, eventually arrived and were able to free Ms. Sanders from the student’s grasp.

Immediately following the assault, Ms. Sanders’ brother drove her to Patient First. Ms. Sanders testified that she was in excruciating pain from her back to her left shoulder and neck. The doctor was concerned that she had a broken neck, so he placed her in a brace and had her transported by ambulance to the hospital. She was diagnosed with a sprained neck and released. Ms. Sanders continued to experience pain in her neck and left shoulder. She started physical therapy on October 24, 2014, and she had an MRI on her shoulder on October 27, 2014. The radiologist’s report stated that she had arthritic damage and worn-down cartilage that appeared “degenerative in nature.”

On November 5, 2014, Ms. Sanders saw Dr. Levine at Union Memorial MedStar Orthopedics. Dr. Levine's report stated that, after his review of X-rays and an MRI, his assessment was that Ms. Sanders had an "osteoarthritic shoulder with irritated rotator cuff that was aggravated during [the] injury and also cervical spine problems which could be contributing some of her shoulder pain." He gave her an "injection of Kenolog and Marcaine."

Ms. Sanders testified that she attempted to return to work in December 2014, but she could only use her right hand to drive. Cortisone injections provided her with short-term relief that allowed her to work, but once it wore off, her pain would always return. She stopped working in March 2015.

Ms. Sanders saw two additional doctors, Dr. Walter Roche and Dr. Michael Marion, during late 2014 and early 2015. They prescribed pain medication and administered additional injections to decrease inflammation. Dr. Roche examined Ms. Sanders on November 19, 2014, and reported as follows: "MRI of the shoulder completed at John Hopkins Imaging Center on 10/27/14 reported evidence of glenohumeral arthropathy with a high-grade cartilage defect and complex joint effusion with associated synovitis and intraarticular loose bodies. These findings are chronic and degenerative in nature, related to the pre-existing [osteoarthritis]." He further noted that she had a left "shoulder sprain with exacerbated chronic mechanical pain as [a] result of pre-existing glenohumeral [osteoarthritis] with loose bodies and partial rotator cuff tear."

Dr. Marion examined Ms. Sanders on March 3, 2015. In his report, he stated that Ms. Sanders told him “she had very good function of her shoulder at that time after physical therapy[,]” but she had reinjured her shoulder on December 19, 2014, “when she was opening a hatch in the school bus.”<sup>1</sup> His report reflected that Ms. Sanders was experiencing “burning pain” in her left arm and shoulder up to her neck and could not raise her arm above shoulder level. Following an x-ray of the shoulder, Dr. Marion wrote that he found “a narrowing of the glenohumeral joint consistent with osteoarthritis[.]” Dr. Marion saw Ms. Sanders again June 1, 2015, at which time he reported that the shoulder looked “much better.”

On September 3, 2015, Ms. Sanders began seeing Dr. Anand Murthi, an orthopedic surgeon at MedStar Union Memorial Hospital. She told him that her pain had worsened and had become “debilitating.” His initial assessment was that her left shoulder had “posttraumatic arthritis with impingement,” and an x-ray of the shoulder “revealed mild early arthritis,” confirmed by an MRI showing “multiple degenerative cartilaginous defects synovitis and intact rotator cuff.”

On September 30, 2015, Dr. Murthi performed arthroscopic surgery on Ms. Sanders’ left shoulder.<sup>2</sup> She continued to see Dr. Murthi for follow-up visits. During a

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<sup>1</sup> Ms. Sanders testified that this was an aggravation of the original injury, and the focus of the litigation below was on the initial October 2014 injury.

<sup>2</sup> The surgery that day consisted of three different procedures; a “[l]eft shoulder arthroscopic acromioplasty,” a “[l]eft shoulder arthroscopic extensive joint debridement with microfracture,” and a “[l]eft shoulder open biceps subpectoral tenodesis.”

visit in April 2016, he noted that, if her pain and stiffness continued, she likely would need shoulder replacement surgery.<sup>3</sup>

On February 25, 2016, Ms. Sanders filed a request with RPS for ordinary and accidental disability retirement benefits. In her application, she stated that she was “assaulted by a student on [the] school bus” on October 7, 2014. She described her disability as follows: “Painful neck with problems moving. Left arm restricted severely, in movement and decreased strength along with shoulder issues.” In response to a question asking how this disability affected her job performance, she stated that she was unable to turn her head to check the bus mirrors or lift “ceiling hatches, push up windows,” or move wheelchairs on and off the bus. As a result, she indicated that she was “totally and permanently incapacitated for the further performance of duty as the natural and proximate result of the accident.” Ms. Sanders’ application also included Physician’s Medical Reports by Dr. Morrill and Dr. Murthi. Dr. Murthi’s report indicated that he had treated her for “[p]ost-traumatic arthritis, stiffness, [and] pain [in] left shoulder.”

On June 9, 2016, the RPS Medical Board recommended that her request for ordinary disability be approved, but her request for accidental disability be denied because “the evidence submitted does not support a conclusion that the disability [was] the natural and

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<sup>3</sup> Ms. Sanders and Dr. Murthi continued to discuss the need for replacement surgery at her 2017 and 2018 appointments. At the December 2018 hearing before the ALJ, Ms. Sanders testified that she was in the process of trying to get this surgery approved by workers’ compensation.

proximate result of an accident.” The Board of Trustees (“Board”) accepted this recommendation on June 21, 2016.

On July 13, 2016, Ms. Sanders requested that the Board reconsider the denial of her claim for accidental disability benefits. In response, RPS asked Dr. Robert Smith, a private-practice physician with a specialty in orthopedic shoulder surgery, to perform an Independent Medical Evaluation (“IME”) on Ms. Sanders to assist the Board in evaluating her condition in connection with her disability claim and to specifically address the question whether her disability was the natural and proximate result of the October 7, 2014, accident.

On November 4, 2016, Dr. Smith performed the requested IME of Ms. Sanders and completed a report with his findings. After a review of her medical records, he noted that initially she was treated for mild neck pain, and cervical imaging showed nothing acute. She subsequently was diagnosed with “an osteoarthritic shoulder with irritated rotator cuff that was aggravated and cervical spine ‘problems’ which ‘could’ be contributing to her shoulder pain.” A subsequent arthroscopic procedure showed “diffuse degenerative changes in the shoulder joint.”

He concluded as follows:

**Impression:** Ms. Sanders sustained a soft tissue sprain of her neck in the work incident of October 7, 2014. This condition has objectively resolved. Given the mechanism of injury, there is no causal connection between her shoulder arthritis or carpal tunnel syndrome and the subject date of loss.

**Discussion:** There is no evidence in the record that Ms. Sanders['] pre-existing degenerative disease was structurally aggravated by this accident.

**Opinion:** After examining Ms. Sanders and reviewing all of the available medical records, including the job description, I conclude that she is permanently disabled but the disability is not the natural and proximate result of the accident on October 7, 2014. The disabling condition is nonindustrial arthritis of the cervical spring and shoulder.

This report was submitted to RPS for consideration.

On December 14, 2016, the Medical Board upheld its original recommendation that Ms. Sanders' request for accidental disability benefits be denied. On December 20, 2016, the Board again accepted the Medical Board's recommendation, stating as follows:

The Medical Board reviewed all of the additional records you provided along with the records filed on the first review of your case. **Also the Board reviewed the report of the physician it requested and who met with you and evaluated all of your records.** Based on all of this evidence regarding your disability, the Medical Board determined that the evidence submitted does not support a conclusion that an accident caused your permanent disability, as required by [Md. Code Ann., (2015 Repl. Vol.), § 29-109(b)(1) of the State Personnel and Pensions Article ("SPP")].<sup>[4]</sup>

(Emphasis in original.)

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<sup>4</sup> Md. Code Ann., St. Pers. & Pens. Article ("SPP") § 29-109(b)(1) (2015 Repl. Vol.), provides that a person is entitled to accidental disability if "the member is totally and permanently incapacitated for duty as the natural and proximate result of an accident that occurred in the actual performance of duty at a definite time and place without willful negligence by the member[.]"



## II.

### Administrative Appeal

#### A.

#### OAH Hearing

On January 20, 2017, Ms. Sanders appealed the Board's decision to the Office of Administrative Hearings ("OAH") and requested a hearing before an ALJ. The ALJ held a hearing on December 7, 2018. Ms. Sanders, represented by counsel, testified that she had not sought medical treatment or experienced any pain in her left shoulder before the October 7, 2014, accident. She stated that, at the time of hearing, she still was unable to move her left arm at the shoulder joint, and it caused her constant pain and trouble sleeping. She testified that she was unable to perform her duties as a bus driver because she could not turn her head to check the mirrors or turn the steering wheel as a result of her shoulder pain.

On cross-examination, counsel for RPS challenged Ms. Sanders' assertion that she had never experienced any left shoulder pain prior to the accident by highlighting a January 2010 report by her primary care physician, Dr. Morrill. This report provided:

[Ms. Sanders] stated that she had a torn rotator cuff on her right shoulder but since the last snow storm she had been having problems with her left shoulder and felt like the right one thought it may be a torn rotator cuff as well. She had a shot of cortisone in her right shoulder which did not seem to be giving her any problems but now the left shoulder was really hurting her. She would like to get a script for an x[-]ray or something to see what was wrong[.]

Ms. Sanders responded that she did not get an x-ray because she felt better without the need for treatment. She testified that she had forgotten about this incident because it was not the purpose of the appointment.

In addition to her own testimony, Ms. Sanders introduced a transcript of Dr. Murthi's deposition, taken on October 19, 2018.<sup>5</sup> Dr. Murthi noted that Ms. Sanders' October 27, 2014, MRI showed that the arthritis in her shoulder included "bone on bone where cartilage has been worn [down] causing a reactive inflammatory fluid and inflammation in the shoulder joint." There also was mild tearing of the rotator cuff tendon, which was consistent with arthritis of the joint. He opined that the accident aggravated Ms. Sanders' arthritis in her left shoulder to the point where it became severe. He stated a person can have mild arthritis with no symptoms and torsional twisting can cause further breakdown of the joint, which can happen quickly. He explained: "So she most likely had [a] completely [a]symptomatic shoulder with some mild arthritis and then this injury exacerbated it and then it went downhill." He believed that the accident "aggravated the preexisting dormant condition in the neck," causing pain.

Dr. Murthi stated that Ms. Sanders had "posttraumatic arthritis," which meant that she had an injury or trauma to the joint that caused the arthritis. He opined that there "was direct causation between the injury and the resulting posttraumatic arthritis," stating that

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<sup>5</sup> The ALJ denied Ms. Sanders' pre-hearing request to submit a video deposition of Dr. Murthi, but the ALJ allowed her to introduce the transcript. The ALJ indicated that Dr. Murthi's deposition testimony would be given the weight of an affidavit because there was no opportunity to cross-examine him.

the accident was the proximate cause of her left shoulder injury and the aggravation of her preexisting arthritis. The reasons for that opinion were that Ms. Sanders had “no preexisting complaints or treatment to her left shoulder” prior to the injury, but afterwards she had “relatively severe arthritis impingement and bicipital tendinitis” requiring surgery.<sup>6</sup> He stated that the “torsional twisting” that occurred during the accident “caused her left shoulder to undergo compression and further degeneration” of the arthritis, including worsening of “crepitation[,] which is loose bodies within the joint causing pain.”

Dr. Smith, an expert in orthopedic surgery, testified that he conducted an IME on Ms. Sanders. He found that her shoulder had no “deformity” or “atrophy.” When he asked Ms. Sanders to move the shoulder, she reported pain but was “able to demonstrate 90 degrees of abduction and flexion,” i.e., she was able to raise her arm parallel to the floor. He testified that he did not observe any “instability” of the shoulder, “meaning all the ligaments and everything were competent.” Dr. Smith further testified that she had “no impingement findings.”

As a result of the IME and a review of her medical records, he concluded that “the record was consistent with a soft tissue sprain of her neck, primarily in the trapezial muscle area.” By the time he saw Ms. Sanders, the sprain had “objectively resolved.” The MRI showed no acute changes, but rather, longstanding degenerative disease of the shoulder.

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<sup>6</sup> Dr. Murthi explained that “impingement” causes pain when the arm is raised and indicates “either exacerbation of arthritis or damage to the rotator cuff.” Dr. Smith later testified that impingement occurs when the rotator cuff tendon is pinched between the two surrounding bones.

Dr. Smith agreed that Ms. Sanders was disabled due to the arthritis in her cervical spine and shoulder. In his opinion, however, her disability was not caused by the October 7, 2014, accident. Rather, it was the result of degenerative, “long-standing arthritis” in her cervical spine and shoulder. Dr. Smith opined that, based on his review of her medical records, her shoulder pain would have developed even if the accident had not occurred.

Dr. Smith further testified that, if Ms. Sanders had torn her rotator cuff in the accident, she would have experienced a great deal of pain in her shoulder. A review of the emergency room records, however, showed that she only reported neck pain at the time of the accident. He testified that, “[i]f there had been a devastating injury to her shoulder in this incident, [she] certainly would have had left shoulder pain and there probably would have been some findings of swelling and inability to raise the arm at all from [an] acute tear.” He highlighted that her shoulder pain did not appear in the medical records until 17 days after the accident.

Dr. Smith explained that “post-traumatic arthritis” occurs when someone has “suffered significant injury to the joint, either dislocation or a fracture through the joint that disrupts the articular surface and that leads to an acceleration or appearance of arthritis.” He testified that it generally takes about 10–12 months for post-traumatic arthritis to develop following an injury, and it would not be visible on the MRI 20 days after an accident. He further opined that there was no evidence, based on how Ms. Sanders had described her positioning, of a “torsional” twisting motion sufficient to cause damage. Moreover, if such a devastating injury had occurred, her condition would not have

improved without surgery; yet her pre-surgery physical therapy records from December 2014, and Dr. Marion's report in June 2015, indicated that she had improved shoulder function. Dr. Smith further stated that, based on his review of the medical records, Ms. Sanders was "going to get end-stage arthritis just by the natural progression of that disease, whether or not she had any trauma to the shoulder."

With respect to Dr. Murthi's deposition testimony, Dr. Smith testified that he respectfully disagreed with his conclusion that the accident was the cause of her pain. Although Ms. Sanders said she was asymptomatic for more than four years prior to the accident, Dr. Smith stated that "temporal association doesn't prove causation."

## **B.**

### **Administrative Decision**

On March 7, 2019, the ALJ issued a written opinion affirming the Board's denial of Ms. Sanders' application for accidental disability retirement benefits. The ALJ discussed the claims of each party, the evidence, and the case of *Eberle v. Baltimore County*, 103 Md. App. 160 (1995), discussed *infra*. He noted that Dr. Murthi "testified that [Ms. Sanders] suffered a torsional or twisting of her shoulder during the incident on October 7, 2014, which, even if not a severe injury, was sufficient enough to cause posttraumatic arthritis or exacerbate [Ms. Sanders'] preexisting asymptomatic arthritis." Dr. Smith, by contrast, testified that there was no evidence that the "preexisting degenerative disease was structurally aggravated by this accident," and the cause of Ms. Sanders' disability was "degenerative joint disease unrelated to the" accident. The ALJ noted that Dr. Smith

opined that, even without the accident, Ms. Sanders' significant arthritis eventually would have prevented her from working. The ALJ stated that Dr. Smith's opinion, that Ms. Sanders "suffered a relatively mild shoulder strain" from the accident, but was "now incapacitated due to the shoulder osteoarthritis," was based on objective medical evidence and consistent with "the opinions of the other physicians."

With regard to the competing expert testimony, the ALJ stated that, "[d]espite his impeccable credentials, I find Dr. Murthi's testimony concerning [Ms. Sanders'] posttraumatic arthritis, and his opinion concerning the cause of [Ms. Sanders'] incapacity, unconvincing. [Ms. Sanders'] significant shoulder arthritis did not develop in the twenty days between the October 7, 2014, incident and the MRI." The ALJ found Dr. Smith's opinion to be "much more convincing than Dr. Murthi's opinion." He stated that the significant arthritis predated the accident, a finding that was supported by the evaluations performed by Dr. Levine, Dr. Roche, and Dr. Marion.

The ALJ's written opinion concluded as follows:

Dr. Murthi's opinion concerning the cause of [Ms. Sanders'] incapacity actually precludes [Ms. Sanders] from receiving an accidental disability retirement allowance. Dr. Murthi conceded that [Ms. Sanders] had shoulder arthritis that was exacerbated by the incident on October 7, 2014. An incapacity that is due to the exacerbation of a preexisting condition is not a basis for an award of an accidental disability retirement allowance. Section 29-109(b) of the State Personnel and Pensions Article, unlike the Montgomery County Code at issue in *Ahalt v. Montgomery County*, 113 Md. App. 14 (1996), a case cited by [Ms. Sanders], does not permit an award of an accidental disability allowance based on a line-of-duty aggravation of a preexisting condition. The evidence in this record indicates that the incident on October 7, 2014, at most aggravated or exacerbated a preexisting condition – [Ms. Sanders'] degenerative shoulder arthritis – and is not the substantial contributing cause of her disability. In summary, [Ms. Sanders]

would not have been incapacitated from performing her duties based on what occurred on October 7, 2014, without an aggravation or exacerbation of a preexisting, if asymptomatic, condition. [Ms. Sanders] failed to prove a causal connection between the incident on [October 7, 2014], and the permanence of her incapacity.

**C.**

**Judicial Review**

On March 29, 2019, Ms. Sanders filed a petition for judicial review of the ALJ's decision in the Circuit Court for Baltimore City. The circuit court held a hearing in September 2019. Ms. Sanders, represented by counsel, argued that the ALJ's findings were not based on substantial evidence because the ALJ found that there was aggravation, yet Dr. Smith's testimony, on which the ALJ explicitly relied, was that the shoulder arthritis was not aggravated by the workplace accident. She also asserted that the ALJ committed legal error because, based on the plain language of the phrase "natural and proximate result of an injury on the job," Maryland workers' compensation law, and foreign jurisdictions, an accident that causes a condition to go from asymptomatic to symptomatic is sufficient to satisfy the causation standard.

Counsel for RPS argued that the ALJ's decision was supported by substantial evidence because the ALJ explicitly considered the testimony of both Dr. Smith and Dr. Murthi, as well as the other medical reports in the record, and came to the well-reasoned conclusion that Ms. Sanders had significant shoulder arthritis prior to the October 7, 2014, incident. The denial of benefits was correct as a matter of law because, pursuant to *Eberle*, the ALJ properly found that Ms. Sanders had not shown sufficient causation. RPS further

asserted that the court was not bound by workers' compensation law, and the ALJ properly exercised his discretion when he gave one expert's testimony more weight than the other.

At the conclusion of the hearing, the circuit court stated that it read the ALJ's decision as involving two grounds for denying disability benefits. One basis was that he found Dr. Smith's testimony, that the pain Ms. Sanders was suffering was due to the progression of osteoarthritis not the incident that initially disabled her, to be convincing. The court stated that the ALJ did not abuse its discretion in making that credibility finding, and there was a substantial basis for the ALJ's findings.

The court stated that the ALJ's alternative finding was that, even if Dr. Murthi's opinion was given weight, *Eberle* precluded a finding of accidental disability as a matter of law. The court declined to address this alternative finding because it affirmed the ALJ's denial of Ms. Sanders' application for accidental disability benefits based on the other finding.

This appeal followed.

### **STANDARD OF REVIEW**

The Court of Appeals has explained the standard of review applicable to an administrative agency's final decision:

On review, we look "through the circuit court's . . . decision [], although applying the same standard of review, and evaluate[] the decision of the agency." *People's Counsel for Baltimore County v. Loyola College in Md.*, 406 Md. 54, 66, 956 A.2d 166, 173 (2008) (citations omitted). Our role is thus "limited to determining if there is substantial evidence in the record as a whole to support the [ALJ's] findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law." *Board of Physician Quality Assur. v. Banks*, 354 Md. 59, 67-68, 729



A.2d 376, 380 (1999). In applying the substantial evidence test to the ALJ’s factual findings, we ask “whether a reasoning mind reasonably could have reached the factual conclusion the agency reached.” *Id.* at 68, 729 A.2d at 380. We treat the ALJ’s decision as prima facie correct and presumed valid, as “it is the agency’s province to resolve conflicting evidence and to draw inferences from that evidence.” *Id.* at 68, 729 A.2d at 381 (citations omitted). With respect to an ALJ’s conclusions of law, however, “we have often stated that a court reviews *de novo* for correctness. . . . [I]t is always within our prerogative to determine whether an agency’s conclusions of law are correct, and to remedy them if wrong.” *Schwartz v. Maryland Dep’t of Natural Resources*, 385 Md. 534, 554, 870 A.2d 168, 180 (2005) (citations omitted).

*Lawson v. Bowie State University*, 421 Md. 245, 256 (2011). *Accord McDonnell v. Harford Cty. Hous. Agency*, 462 Md. 586, 619–20 (2019).

## DISCUSSION

Before addressing the merits of appellant’s claim, we provide a brief explanation of the statutory framework that guides our analysis. There are two types of disability retirement benefits available for qualifying employees through the Maryland State Retirement and Pension System: ordinary disability and accidental disability. SPP §§ 29-105 and 29-109. To be eligible for ordinary disability retirement benefits, a member who has five years of eligibility service needs to obtain a certification from the RPS Medical Board stating that they are “mentally or physically incapacitated” from performing their job duties, that the “incapacity is likely to be permanent,” and the member “should be retired.” SPP § 29-105(a). To be eligible for accidental disability retirement benefits, a member must additionally show that they are “totally and permanently incapacitated for duty as the **natural and proximate result of an accident** that occurred in the actual performance of duty at a definite time and place without willful negligence by the

member[.]” SPP § 29-109(b)(1) (emphasis added). In both cases, however, the burden of proof to show eligibility for these benefits is on the member. COMAR 22.06.06.02E(1).

## I.

### Causation

Ms. Sanders contends that the ALJ’s decision that the accident was not “the substantial contributing cause of her disability” was not supported by substantial evidence. She notes that the ALJ relied on Dr. Smith’s opinion that the accident was not the proximate cause of her disabling condition, but rather, her condition was the natural progression of her preexisting arthritis. Ms. Sanders argues that there was no medical basis to support Dr. Smith’s opinion, and therefore, it did not constitute substantial evidence to support the ALJ’s opinion.

RPS argues that there was substantial evidence to deny Ms. Sanders’ accidental disability claim based on lack of causation. It asserts that the testimony of Dr. Smith was credible and supported in the record by the opinions of three other doctors.

As the ALJ noted, Dr. Murthi and Dr. Smith provided conflicting medical opinions about the cause of Ms. Sanders’ disability at the OAH hearing. The ALJ found more credible Dr. Smith’s testimony that the accident was not the cause of Ms. Sanders’ disabling condition.

“If there [is] evidence of fact in the record before the agency, no matter how conflicting, or how questionable the credibility of the source of the evidence, [this Court] has no power to substitute its assessment of credibility for that made by the agency, and by

doing so, reject the fact.” *Terranova v. Bd. of Trustees of the Fire & Police Emps. Ret. Sys.*, 81 Md. App. 1, 12–13 (1989) (emphasis omitted) (quoting *Comm’r of Balt. City Police Dep’t v. Cason*, 34 Md. App. 487, 508 (1977)), *cert. denied*, 319 Md. 484 (1990). “The weighing of the evidence and the assessment of witness credibility is for the finder of fact, not the reviewing court.” *Id.* at 13. Moreover, the reviewing agency has “discretion to accept any explanation for a disability which is supported by substantial evidence.” *Fire & Police Emps. Ret. Sys. of Balt. v. Middleton*, 192 Md. App. 354, 362 (2010).

The ALJ in this case had broad discretion to weigh and assess the credibility of the conflicting expert opinion. *Terranova*, 81 Md. App. at 12–13; *Dackman v. Robinson*, 464 Md. 189, 216 (2019) (“Even if a witness is qualified as an expert, the fact[-]finder need not accept the expert’s opinion[,]’ *i.e.*, the fact-finder is free to reject the expert’s opinion and accord it little or no weight.”) (quoting *Levitas v. Christian*, 454 Md. 233, 247 (2017)). Accordingly, as a threshold matter, we decline to disturb the ALJ’s finding that Dr. Smith’s testimony was more credible than Dr. Murthi’s.

We further conclude that there was substantial evidence to support the conclusion that the accident did not cause Ms. Sanders’ disabling condition. Dr. Smith testified that he had conducted an IME of Ms. Sanders and reviewed her pertinent medical history. He noted that her MRI from October 27, 2014, showed significant osteoarthritis in her shoulder that could not have formed or been aggravated to such an extent in the 20 days following the accident. Instead, contrary to Dr. Murthi’s opinion that Ms. Sanders suffered from post-traumatic arthritis, he stated that it would take approximately a year for post-traumatic

arthritis to develop following an injury, and therefore, the arthritis visible on the MRI was not caused by the accident.

Additionally, Dr. Smith testified that the twisting motion Ms. Sanders described would not have caused the arthritis he observed. He also highlighted that the reports from the day of the accident focus on neck pain, and had Ms. Sanders suffered a devastating injury to her shoulder, she would have experienced acute shoulder pain that would be present in the reports. Dr. Smith's testimony, by itself, provided substantial evidence to support the ALJ's findings in this case. *See Blaker v. State Bd. of Chiropractic Examiners*, 123 Md. App. 243, 259–60 (“[E]xpert testimony was itself sufficient evidence” to support the Board's findings.), *cert. denied*, 351 Md. 662 (1998).

We conclude, as did the ALJ, that *Eberle*, 103 Md. App. at 161–62, is instructive here.<sup>7</sup> Mr. Eberle sustained a work-related injury to his right knee in 1957. *Id.* at 161. After surgery, he returned to all previous activities and had no further knee pain. *Id.* at 162. In 1983, Mr. Eberle started working as a warehouseman and truck driver for Baltimore County government with no work restrictions. *Id.* In September 1987, he sustained an injury to his right knee while on the job. *Id.* He received permanent partial temporary disability benefits through workers' compensation after a finding that he sustained a 45% disability of his right leg, with 35% due to the accidental injury, and 10%

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<sup>7</sup> Although *Eberle v. Baltimore County*, 103 Md. App. 160 (1995), concerned the accidental disability benefit section of the Baltimore County Code, the causation requirement in the county code is identical to that of SPP § 29-109(b)(1). *See* Baltimore County Code § 23-55 (1991).

due to the preexisting condition. *Id.* In September 1989, after returning to work, he suffered another work-related injury to his left knee. *Id.* He again went back to work, but he continued to have pain in both knees, and he eventually had total knee replacement surgery on his right knee. *Id.*

Mr. Eberle again went back to work, but he could not stay on his feet for any length of time. *Id.* at 163. He applied for accidental disability retirement benefits, but the Board awarded only ordinary disability benefits. *Id.* On appeal, the Board of Appeals heard from four medical experts on the issue whether the disability was the “natural and proximate result” of his accidents. *Id.* at 163–65. One expert stated that Mr. Eberle’s degenerative arthritis was aggravated by the workplace accidents, and another opined that it was reasonable to think there had been some aggravation, but it was impossible to tell whether the workplace accidents had changed any of his underlying pathology. *Id.* at 614–15. Another expert discussed “chronic degenerative problems with both knees” and discussed the advisability of Mr. Eberle losing weight. *Id.* at 165. The Board of Appeals found that Mr. Eberle did not meet his burden of proving the causal connection between his current disability and the two workplace accidents. *Id.* The circuit court affirmed the Board of Appeals. *Id.* at 166.

This Court affirmed. *Id.* at 175. We noted that, because there were no Maryland cases with similar facts, we would “look to other jurisdictions to determine whether accidental disability retirement benefits may be awarded when a preexisting condition becomes exacerbated” as a result of a work-related injury. *Id.* at 168. We found persuasive

the decision of the Superior Court of New Jersey in *Quigley v. Bd. of Trustees of the Pub. Emps. Ret. Sys.*, 555 A.2d 642, 646–47 (N.J. App. Div. 1989), which affirmed the denial of accidental benefits after a claimant fell during work. One doctor testified that the fall caused the injuries to the claimant’s knee, but another doctor opined that the claimant’s problems with his knee were the result of degenerative changes to his knee and his overweight condition. *Id.* at 647. That doctor stated that the underlying condition could have flared up due to the injury, but the degenerative changes, without the injury, would have disabled the claimant. *Id.* The Board found that the fall merely aggravated the claimant’s preexisting condition, and the accident was not the substantial contributing cause of his disability. *Id.*

In *Eberle*, similar to *Quigley*, the claimant “suffered an accident while at work that exacerbated their knee problems and rendered them disabled.” 103 Md. App. at 173. Unlike in *Quigley*, however, there was no expert testifying in *Eberle* that, even without the injury, the degenerative changes would have rendered the claimant disabled. *Id.* Nevertheless, we held that, based “on the medical reports that were riddled with references to a preexisting degenerative arthritis problem,” the Board did not err in concluding “that [Mr.] Eberle’s disability was not the natural and proximate result of the accidental injuries he suffered.” *Id.* at 174–75. The Court found that there was sufficient evidence to support the Board’s decision. *Id.*

The reasoning in *Eberle* is applicable to this case. Similar to the claimant in *Eberle*, Ms. Sanders had a pre-existing condition, arthritis. Dr. Smith testified that, although she

suffered pain after the accident, the sprain from the accident “objectively resolved,” and her current disability was due, not to the accident, but to degenerative, “long-standing arthritis” in her cervical spine and shoulder. He testified that Ms. Sanders’ shoulder pain would have developed even if the accident had not occurred. The ALJ’s decision in this case, that Ms. Sanders failed to show that the accident was a substantial contributing cause of her disability was supported by the evidence.<sup>8</sup>

## II.

### Credibility

Ms. Sanders also urges this Court to adopt the “treating physician’s preference rule,” which is utilized in some jurisdictions and provides that a court should give preference to attending physicians as witnesses as opposed to “doctors who have been retained to examine the claimant solely for the purposes of litigation.” *See Lincoln Hockey, LLC v. D.C. Dep’t of Empl. Servs.*, 831 A.2d 913, 919–20 (D.C. 2003) (quoting *Stewart v. District*

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<sup>8</sup> Ms. Sanders also contends that the ALJ’s finding was “illogical, arbitrary and capricious” because, after accepting Dr. Smith’s opinion that the accident was not the proximate cause of her disabling condition, the ALJ stated that, even giving Dr. Murthi’s opinion weight, the accident “at most aggravated or exacerbated a preexisting condition,” and Ms. Sanders would not have been disabled without an aggravation of her preexisting condition. We are not persuaded that the ALJ’s opinion, read as a whole, was illogical or arbitrary. Rather, we agree with the circuit court that the ALJ’s finding that Ms. Sanders was not eligible for accidental benefits was premised on two alternative conclusions: (1) finding Dr. Smith’s testimony to be more credible than Dr. Murthi’s, and accepting his expert opinion that Ms. Sanders’ disability was not the natural and proximate result of the workplace accident; and (2) in the alternative, even giving Dr. Murthi’s opinion weight, Ms. Sanders was not entitled to accidental disability because Dr. Murthi conceded that she had a preexisting condition that was merely aggravated by the accident. The circuit court affirmed the ALJ on the first ground, as do we.

*of Columbia Dep't of Emp. Servs.*, 606 A.2d 1350, 1353 (D.C. 1992)). We note, however, that Ms. Sanders did not make this argument before the ALJ, and therefore, it is not preserved for our review. See *Capital Commercial Prop., Inc. v. Montgomery Cty. Planning Bd.*, 158 Md. App. 88, 96–97 (2004) (Issue was not preserved for appellate review because it was not raised before the administrative agency, and to set aside an administrative decision on a ground not presented below would “usurp[] the agency’s function.”) (quoting *Delmarva Power & Light Co. v. Public Service Comm'n of Md.*, 370 Md. 1, 32 (2002)).

Moreover, even if the issue were preserved, Ms. Sanders has presented no compelling argument to persuade us to adopt this rule in place of Maryland’s well-established principle that the fact finder is entrusted with broad discretion to weigh conflicting expert opinions and decide which testimony to accept. See *Salarian v. Md. State Bd. of Physicians*, 176 Md. App. 231, 250 (2007); *Terranova v. Bd. of Trustees of Fire & Police Emps. Ret. Sys. of Balt. City*, 81 Md. App. 1, 11–12 (1989), *cert. denied*, 319 Md. 484 (1990). Ms. Sanders states no ground for relief in this regard.

**JUDGMENT OF THE CIRCUIT COURT  
FOR BALTIMORE CITY AFFIRMED.  
COSTS TO BE PAID BY APPELLANT.**