Circuit Court for Harford County
Case No. 12-C-17-000167

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1701

September Term, 2017

BONNIE MILLER

v.

JACOBS TECHNOLOGY, INC., et al.

Meredith,
Friedman,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: January 8, 2019

*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.

The Circuit Court for Harford County granted summary judgment to Jacobs Technology, Inc. ("Jacobs"), and its insurer, Ace American Insurance Company, the appellees, on a claim by Bonnie Miller, the appellant, for workers' compensation payments.[1] The court ruled that the claim was barred because it was made more than five years after the date of the accident, contrary to the applicable provision of Md. Code (1991, 2016 Repl. Vol.), Labor and Employment Article ("LE"), section 9-736(b). The court's judgment affirmed the same decision reached by the Maryland Workers' Compensation Commission ("Commission").

On appeal, Ms. Miller asks whether the court's ruling was legally incorrect. For the reasons to follow, we shall affirm the judgment.

FACTS AND PROCEEDINGS

On September 29, 2011, Ms. Miller suffered several injuries when she fell out of a vehicle while working for Jacobs. There is no dispute that her injuries were accidental and arose out of and in the course of her employment. The following month, she filed a claim with the Commission. Jacobs did not contest the claim.

On November 28, 2011, the Commission issued an "AWARD OF COMPENSATION AND AVERAGE WEEKLY WAGE" in which it determined that Ms. Miller's average weekly wage was $1,275.00 and that she was "temporarily totally disabled as a result of said injuries." The Commission's order directed Jacobs to pay weekly compensation to Ms. Miller of $850 for temporary total disability, "provided that the injury

[1] Unless otherwise necessary, we shall refer to Jacobs and its insurer collectively as "Jacobs."

results in disability of more than 14 days[,]" and to provide medical treatment and "other necessary medical services[.]" As it turned out, however, Ms. Miller's period of disability did not exceed 14 days, so she did not have any unpaid compensation and was not entitled to payment of compensation benefits. For that reason, the Commission did not order Jacobs to pay her any compensation benefits, and none were paid. Jacobs paid for her medical treatments.

In early 2013, Ms. Miller filed an "Issues" form with the Commission seeking payment for physical therapy for her neck. After a hearing in March 2013, the Commission ordered Jacobs to provide Ms. Miller with such treatment, provided that it was causally related, reasonable, and necessary. Then, in October 2014, Ms. Miller filed an "Issues" form requesting approval for magnetic resonance imaging scans ("MRIs") and prescriptions. The Issues were withdrawn after Jacobs agreed to the requests.

On April 29, 2016, Ms. Miller was seen by Michael Franchetti, M.D., for an orthopedic consult concerning chronic severe neck pain. Dr. Franchetti determined that Ms. Miller's neck pain was caused by injury to her cervical spine from the September 29, 2011 accident. He referred her to be evaluated by a spinal surgeon.

On July 20, 2016, Ms. Miller filed an "Issues" form with the Commission seeking "authorization for medical treatment per/with Dr. Brosman [a pain management doctor] and authorization for evaluation with spine surgeon." On August 15, 2016, Ms. Miller was seen by William L. Mills, M.D., an orthopedic surgeon. Cervical x-rays revealed "disc space collapse C5-6, C6-7." Dr. Mills recommended a cervical MRI. On September 12, 2016, based on the MRI result confirming his diagnosis, Dr. Mills recommended an

anterior cervical discectomy and fusion surgery, after an evaluation for difficulty swallowing. In a follow-up visit on September 28, 2016, Ms. Miller agreed to have the surgery once the swallowing evaluation was done. The surgery was performed on October 27, 2016.

In the meantime, on October 12, 2016, Ms. Miller filed another "Issues" form with the Commission, which included the original July 20, 2016 request and added, under the box for "other": "Amended - Temporary partial disability ["TPD"] benefits from 6/1/2012 to date of surgery; and temporary total disability ["TTD"] benefits from date of surgery through recuperative period." Thus, in the Amended Issues form, Ms. Miller requested, for the first time, payment of compensation benefits.

Jacobs contested the Amended Issues, asserting that Ms. Miller's request for compensation benefits was made after the five-year time limit imposed by LE section 9-736(b), and therefore had to be denied, as a matter of law. Section (b) provides, in relevant part:

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

(iii) The last compensation payment.

(Emphasis added.)

Jacobs argued that because no compensation payments ever were paid to Ms. Miller and she was never found to have been disabled (and therefore had no date of disablement), the triggering date for the five-year period in which the Commission was empowered to modify its award was September 29, 2011, the date of Ms. Miller's accident. The Amended Issues form asking, for the first time, for the payment of compensation benefits, was filed on October 12, 2016, more than five years after the September 29, 2011 date of accident. Accordingly, Jacobs maintained, the Commission was not empowered to grant the requested modification for payment of compensation.

The Commission held a hearing on January 4, 2017, and on January 12, 2017 issued an order disallowing the claim for compensation benefits because it was barred under LE section 9-736(b).

Less than two weeks later, Ms. Miller filed, in the Circuit Court for Harford County, an action for judicial review. The parties filed cross-motions for summary judgment on the question whether Ms. Miller's claim for compensation benefits was barred by LE section 9-736(b). On October 5, 2017, the court held a hearing on the motions and on October 13, 2017, it entered a memorandum opinion and order granting summary judgment in favor of Jacobs. Ms. Miller then noted this timely appeal.

STANDARD OF REVIEW

In reviewing an action for judicial review in a circuit court, including that of an appeal on the record from a decision of the Workers' Compensation Commission, we look

through the circuit court's decision and consider only the decision of the Commission.[2] *Hollingsworth v. Severstal Sparrows Point, LLC*, 448 Md. 648, 654 (2016). In our review, "we must respect the expertise of the agency and accord deference to the Commission's own interpretation of the statute it administers." *Id.* (citation omitted). Although "the decision of the Commission is presumed to be prima facie correct," LE section 9-745(b)(1), that presumption "does not 'extend to questions of law, which we review independently.'" *Hollingsworth*, 448 Md. at 655 (quoting *Elms v. Renewal by Andersen*, 439 Md. 381, 391 (2014)).

DISCUSSION

There is much that is not in dispute in this case. The parties do not dispute the underlying first-level facts. They agree that the original award in this case did not grant Ms. Miller compensation benefits, and therefore none were paid. They further agree that Ms. Miller had to comply with the five-year limitation period imposed by LE section 9-736(b) for the Commission to be empowered to modify her original award to grant her compensation benefits. They also agree that the triggering date for that five-year period was September 29, 2011, the date of Ms. Miller's accident.

Ms. Miller contends that before September 29, 2016 (and therefore within the five-year limitations period) she in fact filed an Issues form seeking modification of her original

[2] This standard is in contrast with that applicable to the alternative mode of appeal in a workers' compensation case, provided under LE section 9-745(d), the "essential trial *de novo*." *Bd. of Educ. of Mont. Cnty. v. Spradlin*, 161 Md. App. 155, 171 (2005). In that case, "we review the decision of the trial court as we would in any other bench trial." *McLaughlin v. Gill Simpson Elec.*, 206 Md. App. 242, 253 (2012) (citing *Turner v. State, Office of Public Defender*, 61 Md. App. 393, 405 (1985)).

award to pay compensation benefits. She makes two interrelated arguments in support. First, she maintains that a request for TTD compensation benefits was implicit in the Issues form she filed on July 20, 2016, requesting "authorization for evaluation with spine surgeon[,]" because there always will be a period of disability following surgery. Second, she argues, for much the same reason, that her October 12, 2016 Amended Issues form, revising her request to include compensation payments, "related back" to her July 20, 2016 Issues form.

Jacobs responds that the statutory language of LE section 9-736(b) is plain; that Ms. Miller's October 12, 2016 Amended Issues form requesting a modification of her original award to include payment of compensation benefits was made more than five years after the date of her accident; and that the arguments she makes to avoid that five-year bar are contrary to the language of the statute, Maryland case law interpreting that statute, and Maryland Workers Compensation regulations.

Although the Workers' Compensation Act is a remedial statute and is "construed as liberally in favor of injured employees as its provisions will permit in order to effectuate its benevolent purposes," *Hollingsworth*, 448 Md. at 655 (citation and quotation omitted), the rule of liberal construction does not extend to the limitations provision in LE section 9-736. *Stachowski v. Sysco Food Servs. of Balt., Inc.*, 402 Md. 506, 513 (2007); *Stevens v. Rite-Aid Corp.*, 340 Md. 555, 568 (1995). Because the enactment of a limitations provision expresses a legislative intent to compromise the general remedial purpose of the Act in favor of "the purposes served by a limitations provision," *Mont. Cnty. v. McDonald*, 317 Md. 466, 472 (1989) (citation and quotation omitted), we construe section 9-736(b)

"strictly" according to its terms. *Zeitler-Reese v. Giant Food, Inc.*, 137 Md. App. 593, 598 (2001), abrogated by 2002 Md. Laws, ch. 568, § 1.[3]

As noted earlier, the parties agree that the triggering date for the running of the five-year limitations period of LE section 9-736(b) was the date of Ms. Miller's accident, September 29, 2011. Because the only Issues form filed before the limitations period expired was the Issues form filed on July 20, 2016, which requested authorization for evaluation for surgery, that is, medical services, the question becomes whether that filing was sufficient to constitute a request for payment of TTD benefits, that is, compensation. Plainly, it was not.

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[3]When *Zeitler-Reese* was decided, LE section 9-736(b) provided merely that "the Commission may not modify an award unless the modification is applied for within 5 years after the last compensation payment." In that case, Zeitler-Reese had filed an occupational disease claim after developing carpal tunnel syndrome in the course of her employment; the Workers' Compensation Commission subsequently found that she had suffered an occupational disease and that the first date of her disablement was July 1, 1994; and it ordered her employer to pay her ensuing medical expenses but did not award compensation. *Zeitler-Reese*, 137 Md. App. at 595-96. More than five years after the first date of disablement, Zeitler-Reese sought TTD payments, but the Commission ruled that her claim was barred by limitations. *Id.* at 596. After the Circuit Court for Howard County upheld the Commission's ruling, Zeitler-Reese appealed.

This Court reversed. We rejected the employer's (and insurer's) suggestion that, in cases where no compensation has ever been awarded, the limitations period should begin "on either the alleged date of disablement or the date of the original award" and held that, in such a case, "the limitations [had] not expired because [she had] never received any compensation payments." *Id.* at 599. The General Assembly subsequently amended section 9-736(b) to conform to the insurer's suggestion. 2002 Md. Laws, ch. 568, § 1.

(continued)

In *Holy Cross Hospital of Silver Spring, Inc. v. Nichols*, 290 Md. 149 (1981), the Court of Appeals addressed, in the context of the statutory antecedent to section 9-736,[4] whether "compensation" includes "medical benefits." The distinction was important because the Court previously had held that "the liability of the employer to furnish medical services and treatment is not subject to a period of limitation." *Holy Cross*, 290 Md. at 153 (citing *Andrews v. Decker*, 245 Md. 459 (1967), and *A. G. Crunkleton Electric Co. v. Barkdoll*, 227 Md. 364 (1962)).

At that time, "compensation" was defined as "the money allowance payable to an employee or to his dependents as provided for in [the Workers' Compensation Act], and includes funeral benefits provided therein." Md. Code (1957, 1979 Repl. Vol.), Art. 101, § 67(5). (A substantially similar definition still applies currently. *See* LE section 9-101(e)(1)-(2).[5]) The employer's obligation to provide medical services to an injured employee was set forth in Art. 101, § 37, which stated:

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[4] At that time, the limitations provision was codified at Md. Code (1957, 1979 Repl. Vol.), Art. 101, § 40(c). That provision was as follows:

> The powers and jurisdiction of the Commission over each case shall be continuing, and it may, from time to time, make such modifications or changes with respect to former findings or orders with respect thereto as in its opinion may be justified; provided, however, that no modification or change of any award of compensation shall be made by the Commission unless application therefor shall be made to the Commission within five years next following the last payment of compensation.

[5] LE section 9-101(e) states:

> (1) "Compensation" means the money payable under this title to a covered employee or the dependents of a covered employee.

(continued)

> In addition to the compensation provided for herein the employer shall promptly provide for an injured employee, for such period as the nature of the injury may require, such medical, surgical or other attendance or treatment, nurse and hospital services, medicines, crutches, apparatus, artificial hands, arms, feet and legs and other prosthetic appliances as may be required by the Commission, provided, however, that any order or award of the Commission, under this subsection, shall not be construed to reopen any case, or permit any previous award to be changed or modified, except as provided in § 40(c) and 40(d) of this article.

(A substantially similar provision is now codified at LE section 9-660.[6])

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(2) "Compensation" includes funeral benefits payable under this title.

[6] LE section 9-660 states:

(a) In addition to the compensation provided under this subtitle, if a covered employee has suffered an accidental personal injury, compensable hernia, or occupational disease the employer or its insurer promptly shall provide to the covered employee, as the Commission may require:

(1) medical, surgical, or other attendance or treatment;

(2) hospital and nursing services;

(3) medicine;

(4) crutches and other apparatus; and

(5) artificial arms, feet, hands, and legs and other prosthetic appliances.

(b) The employer or its insurer shall provide the medical services and treatment required under subsection (a) of this section for the period required by the nature of the accidental personal injury, compensable hernia, or occupational disease.

(c) Except as provided in § 9-736(b) and (c) of this title, any award or order of the Commission under this section may not be construed to:

(continued)

The *Holy Cross* Court concluded that "compensation" does not include "medical benefits" and that, accordingly, "the request for 'modification or change of any award of compensation' which is subject to the current [five-year] limitations provision does not

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> > (1) reopen any case; or
> >
> > (2) allow any previous award to be changed.
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> (d)(1) A provider who provides medical service or treatment to a covered employee under subsection (a) of this section shall submit to the employer or the employer's insurer a bill for providing medical service or treatment within 12 months from the later of the date:
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> > (i) medical service or treatment was provided to a covered employee;
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> > (ii) the claim for compensation was accepted by the employer or the employer's insurer; or
> >
> > (iii) the claim for compensation was determined by the Commission to be compensable.
>
> (2) The employer or the employer's insurer may not be required to pay a bill submitted after the time period required under paragraph (1) of this subsection unless:
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> > (i) the provider files an application for payment with the Commission within 3 years from the later of the date:
> >
> > > 1. medical service or treatment was provided to the covered employee;
> > >
> > > 2. the claim for compensation was accepted by the employer or the employer's insurer; or
> > >
> > > 3. the claim for compensation was determined by the Commission to be compensable; and
> >
> > (ii) the Commission excuses the untimely submission for good cause.

include a claim for medical benefits." *Holy Cross*, 290 Md. at 159. *See also Paolino v. McCormick & Co.*, 314 Md. 575, 577 n.1 (1989) (observing that "[m]edical benefits are not payment of compensation within the meaning of [the antecedent to LE section 9-736(b)]").

The Court's holding is consistent with the statutory language concerning medical services, which are provided "[i]n addition to the compensation provided under this subtitle," LE section 9-660(a), and also with the language invoking the limitations provision, namely, that, except as provided under the limitations provision, an award of medical benefits "may not be construed" to "reopen any case" or "allow any previous award to be changed." *Id.* at section 9-660(c)(1)-(2). We conclude that, in the instant case, under a straightforward application of *Holy Cross* and the relevant statutes, the July 20, 2016 Issues form, requesting medical services, may not be construed as a request for compensation.

Our conclusion comports with other case law and the pertinent Maryland regulations. In *Buskirk v. C.J. Langenfelder & Son, Inc.*, 136 Md. App. 261 (2001), the claimant filed a timely petition to reopen an award. He alleged a worsening of condition and sought medical benefits. He did not allege a change in disability status, which could have been a basis for granting compensation. After the five-year limitations period had expired, the claimant filed a petition seeking a change in disability status and compensation benefits. We held that the claimant's timely-filed petition for medical benefits did not toll the five-year period for filing a request to modify compensation. *Id.* at 263-64. Indeed, it had no effect on the five-year limitations period at all.

Likewise, in *McLaughlin v. Gill Simpson Electric*, 206 Md. App. 242 (2012), we held that issues filed within the five-year limitations period that alleged "only continuing medical treatment," did not "put the Commission or an employer/insurer on notice of an increase in disability." *Id.* at 259-60. Moreover, we concluded that an injured employee may not "file a protective request for a change in disability status within the five-year time frame, and later supplement the request with Issues" because to permit such a protective request would circumvent the limitations provision. *Id.* at 262 (citing *Buskirk*).

As for Ms. Miller's assertion that the July 20, 2016 Issues form "implicit[ly]" contained a request for TTD benefits, we look to COMAR 14.09.03.02, governing the filing of Issues. That regulation states that, "[o]n the Issues form, the party shall state with clarity issues to be determined and shall, if relevant . . . [i]nclude the inclusive dates of any temporary total disability[.]" COMAR 14.09.03.02D. That regulation is flatly inconsistent with the concept that Issues requesting only medical services implicitly embody a request for TTD benefits. Likewise, when we consult COMAR 14.09.03.13, which governs motions for modification, we find that a "party seeking modification must file a Motion for Modification within 5 years of the later of the date of the accident, the date of disablement, or the date of the last compensation payment," COMAR 14.09.03.13B, and that the "motion shall state specifically the finding or order that the party wishes modified and the facts and law upon which the party is relying as grounds for the modification." COMAR 14.09.03.13C. Neither of these provisions supports Ms. Miller's argument that a request for medical services may be construed as impliedly containing a request for a change in disability status.

Finally, we reject Ms. Miller's contention that the October 12, 2016 Amended Issues form, which first expressly sought a change in disability status, related back to her timely-filed July 20, 2016 Issues form, which sought only medical services. For one thing, Ms. Miller cites no authority in which the relation-back doctrine has ever been applied in the context of LE section 9-736(b). Moreover, even if we were to assume, for the sake of argument, that the relation back doctrine could apply, the October 12, 2016 Amended Issues form would, we believe, amount to an assertion of a new cause of action and would not, in any event, relate back to the July 20, 2016 Issues form. *See*, *e.g.*, *Youmans v. Douron, Inc.*, 211 Md. App. 274, 291 (2013) (explaining that relation back does not apply when an amended pleading seeks to introduce a "new cause of action").

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