

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 0024

September Term, 2015

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WILLIAM J. FOARD

v.

MARYLAND STATE RETIREMENT AND  
PENSION SYSTEM

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Woodward,  
Friedman,  
Davis, Arrie W.  
(Retired, Specially Assigned),

JJ.

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Opinion by Friedman, J.

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Filed: May 3, 2016

\*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.

We are asked to determine whether the Administrative Law Judge (“ALJ”), in determining whether appellant William Foard was entitled to accidental disability benefits: (1) improperly concluded that Foard was required to present expert testimony; and (2) applied the correct legal standard for causation.

### **BACKGROUND**

On March 14, 2011, while working as a paramedic in Dorchester County, Foard sustained an injury to his left knee when he “body-blocked” a patient to keep the patient from falling out of bed. Foard had experienced previous problems with his left knee—an ACL tear, which was repaired in 2010, and arthritis. Following the March 2011 accident, Foard attempted to return to work several times, but his knee pain kept him from doing so successfully. In October 2011, Dr. Jason Scopp performed arthroscopic surgery on Foard’s left knee. Three other physicians evaluated Foard following the accident and surgery: (1) Michael Ward, D.O.; (2) Michael Franchetti, M.D.; and (3) Willie Thompson, M.D.

In March 2012, Foard applied for disability retirement benefits for the knee injury. Appellee Maryland State Retirement and Pension System (“RPS”) recommended that Foard receive ordinary disability retirement benefits, but denied him accidental disability retirement benefits. RPS’s Board of Trustees (the “Board”) accepted RPS’s recommendation and, consequently, Foard appealed RPS’s decision to the Office of Administrative Hearings (“OAH”).

At the OAH hearing before the ALJ, three of Foard’s physicians’ evaluations were submitted into evidence. All three reports opined that the March 2011 accident caused Foard’s disability. None of Foard’s physicians presented live testimony. RPS’s expert

witness, Dr. Gary Pushkin, an orthopedist who had also examined Foard, appeared in person and testified that Foard’s pain and loss of mobility was caused by his pre-existing arthritis.

Following the hearing, the ALJ issued a proposed decision, which recommended that the Board deny Foard’s application for accidental disability. The ALJ concluded that Foard was unable to meet his burden because “no medical expert had testified in support of [Foard’s] claim.” The Board adopted the ALJ’s proposed decision. Foard filed a petition for judicial review in the Circuit Court for Wicomico County, and, following a hearing, the circuit court issued an opinion upholding the Board’s decision.

### **DISCUSSION**

On appeal, Foard asks us to determine whether the ALJ: (1) incorrectly concluded that Foard was required to present live expert testimony; and (2) applied the incorrect standard of causation for accidental disability. We agree with Foard’s first contention and conclude that the ALJ incorrectly stated that Foard was required to present live expert testimony. Therefore, we remand for reconsideration. As such, we decline to address Foard’s second contention.<sup>1</sup>

Foard argues that the ALJ erred in concluding that his physicians were required to testify in person at the hearing. RPS responds that the ALJ did not require that Foard

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<sup>1</sup> For her assistance on remand, we remind the ALJ that the correct standard for determining causation in this context is that a disability was “a natural and proximate result of an accident,” and that a claimant is not required to prove that the accident was the sole or exclusive cause of his or her disability Md. Code Ann., State Pers. & Pens. § 29-109(b); *Eberle v. Baltimore County*, 103 Md. App. 160 (1995).

present live expert testimony, but that, in weighing the evidence, the ALJ gave less weight to Foard’s physicians’ reports than to RPS’s expert’s testimony, which is appropriate as the ALJ must weigh the evidence. From our review of the ALJ’s decision, we agree with Foard and conclude that the ALJ improperly determined that he was required to present expert testimony at the OAH hearing. As a result, we are compelled to remand. We explain.

The ALJ’s proposed decision stated that expert testimony supporting Foard’s claim was “necessary” and without it, Foard was unable to meet his burden. The decision stated:

[N]o medical expert testified in support of [Foard’s] claim. As the Court of Special Appeals has held, “[w]hen a complicated issue of medical causation arises, expert testimony is almost always required.” *Giant Food v. Booker*, 152 Md. App. 166, 178 (2003). The issues raised in this case undoubtedly involve complicated issues of medical causation, and expert testimony was therefore necessary. Without an expert to document and fully explain [Foard’s] assertion that his disability is the natural and proximate result of the Accident, he is unable to meet his burden.

We review the administrative agency’s decision, and not the circuit court’s findings of fact and conclusions of law. *Hersl v. Fire & Police Employees’ Ret. Sys.*, 188 Md. App. 249, 260 (2009). Our role “is limited to determining if there is substantial evidence in the record as a whole to support the agency’s findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law.” *Bd. of Physician Quality Assur. v. Banks*, 354 Md. 59, 67-68 (1999) (internal citations and quotations omitted).

OAH proceedings are less formal—and follow less formal rules, including rules of evidence—than court proceedings. Under these relaxed standards, there is no requirement

that a party present expert testimony. “The General Assembly . . . recognized that the formal rules of evidence possess far greater utility in jury trials than an agency hearing before a presumably expert hearing office.” *Para v. 1691 Ltd. P'ship*, 211 Md. App. 335, 380 (2013). “[T]hese hearings, should be understandable to the layman claimant, should not necessarily be stiff and comfortable only for the trained attorney, and should be liberal and not strict in tone and operation.” *Id.* at 381 (internal citations and quotations omitted). Under these relaxed standards, hearsay evidence is both admissible at OAH hearings and may be the sole basis for an ALJ’s decision. COMAR 28.02.01.21C (“Evidence may not be excluded solely on the basis that is hearsay.”); *Hammen v. Baltimore County Police Dep’t*, 373 Md. 440, 453 (2013) (“rules relating to the admissibility of evidence are more relaxed in administrative proceedings”). Thus, there is no requirement that a party at an OAH proceeding present live testimony to establish his or her case. The ALJ’s statement that Foard was required to present expert testimony to establish his case was incorrect and an erroneous conclusion of law.<sup>2</sup> Foard was under no obligation to produce an expert, and could have established his case entirely through medical reports. We, therefore, remand

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<sup>2</sup> The ALJ’s reliance on *Giant Food, Inc. v. Booker*, 152 Md. App. 166 (2003) for the proposition that expert testimony was required was in error. *Giant Food* did not involve an OAH proceeding, but rather a circuit court jury trial. 152 Md. App. at 175. The *Giant Food* Court was concerned about complicated medical causation issues being presented to “a jury of laypersons.” *Id.* at 180. Therefore, this Court concluded that expert testimony is necessary to establish medical causation “where there is lacking an obvious cause and effect relationship that is within the common knowledge of laymen.” *Id.* An OAH proceeding, however, takes place “before a presumably expert hearing office,” not a jury of laypersons. *Para*, 211 Md. App. at 380. Therefore, *Giant Food*’s policy of requiring an expert to explain medical causation to a lay jury does not extend to OAH proceedings before an ALJ.

this matter to the circuit court to remand to the ALJ for reconsideration of the proposed decision in light of this opinion.

We note that, on remand, the ALJ may weigh the evidence and find that Foard's physicians' reports are insufficient to prove accidental disability. The ALJ cannot, however, impose a requirement that Foard present live expert testimony at an OAH hearing.

**JUDGMENT VACATED. CASE REMANDED TO THE CIRCUIT COURT FOR WICOMICO COUNTY WITH DIRECTIONS THAT THE DECISION OF THE BOARD OF TRUSTEES OF THE MARYLAND STATE RETIREMENT AND PENSIONS SYSTEM BE VACATED, AND THE CASE REMANDED TO THE OFFICE OF ADMINISTRATIVE HEARINGS FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.**