

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2144

September Term, 2015

BURNETTA SPEIGHT

v.

JAMES MYERS COMPANY, INC., *et al.*

Krauser, C.J.,
Nazarian,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 8, 2017

*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.

In 1994, Thomas Speight, the husband of Burnetta Speight, appellant, was working for James Myers Company, Inc., appellee, (employer) when he fell off a roof and sustained a severe brain injury. As a result of that injury, the Maryland Worker’s Compensation Commission (the Commission) found him to be totally and permanently disabled. Four years later, in February of 1998, Mr. Speight died.

Fifteen years after Mr. Speight’s death, in 2013, appellant filed a “Dependent’s Claim for Death Benefits” with the Commission pursuant to Md. Code, Lab. & Empl. § 9-678. Although such claims are normally required to be filed within eighteen months after the death of the covered employee, *see* Md. Code, Lab. & Empl. § 9-710 (b)(1), appellant contended that her failure to file a timely claim was the result of fraud committed by an agent of Pennsylvania Manufacturing Association, Inc., employer’s insurance company (the insurer), and, therefore, that appellees should be estopped from raising the statute of limitations as a defense. Following a hearing, the Commission denied appellant’s claim finding (1) that there was no evidence her husband’s death had been caused by his 1994 injury and (2) that her claim for benefits was untimely.

Appellant then sought judicial review in the circuit court and requested a *de novo* jury trial on all contested factual issues. After discovery was completed, appellees filed a motion for summary judgment, contending that appellant’s claim was barred by the statute of limitations and that she had failed to proffer any evidence demonstrating that her husband’s death had been caused by his 1994 injury. The circuit court granted appellees’ motion on both grounds.

Although the arguments made in appellant’s brief appear, at times, to be convoluted, she essentially raises two questions for our review: (1) whether the circuit court erred in finding that her claim was barred by the statute of limitations and, therefore, in granting appellees’ motion for summary judgment and (2) whether the Commission erred by not referring the insurer’s agent, who she claimed had committed fraud, to the Insurance Fraud Division. *See* Md. Code, Lab. & Empl. § 9-310.2(a)(“In any administrative action before the Commission, if it is established by a preponderance of the evidence that a person knowingly affected or knowingly attempted to affect the payment of compensation . . . by means of a fraudulent representation, the Commission shall refer the case on the person to the Insurance Fraud Division in the Maryland Insurance Administration.”). For the reasons that follow, we affirm.

Pursuant to Md. Rule 2-501(f), a court may not grant summary judgment unless there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. In considering the motion, the court views the facts, including all inferences, in the light most favorable to the non-moving party. *Sadler v. Dimensions Healthcare Corp.*, 378 Md. 509, 536 (2003). In reviewing the granting of a motion for summary judgment, we must determine whether the decision was legally correct and our review is confined to the basis relied upon by the court below. *Id.*

Even if there was some evidence upon which a theory of estoppel could have been submitted to the jury, which would have excused appellant’s failure to file a timely claim, the trial court did not err in granting appellee’s motion for summary judgment. A dependent of a covered employee is only entitled to compensation for the death of the

covered employee “*resulting from an accidental personal injury or occupational disease.*” See Md. Code, Lab. & Empl. § 9-501(a)(2) (emphasis added). Viewing the evidence in the light most favorable to appellant, no evidence was presented from which a jury could have found that the death of Mr. Speight was caused by his 1994 accidental injury. The only evidence presented by either party regarding Mr. Speight’s death was his death certificate, which listed the cause of his death as cardio-respiratory arrest. Moreover, without the benefit of medical expert testimony, appellant could not establish causation because (1) almost four years had elapsed between Mr. Speight’s injury and his death and (2) there was no obvious cause and effect relationship between Mr. Speight’s head injury and his subsequent cardio-respiratory arrest. See generally *Giant Food, Inc. v. Booker*, 152 Md. App. 166, 178-79 (2003) (noting that expert medical testimony is almost always required when a complicated medical question arises especially when the following circumstances are present: “1) some significant passage of time between the initial injury and the onset of the trauma; 2) the impact of the initial injury on one part of the body and the manifestation of the trauma in some remote part; 3) the absence of any medical testimony; and 4) a more arcane cause-and-effect relationship that is not part of common lay experience”).

Finally, the Commission did not err in not referring the insurer’s agent to the Insurance Fraud Division because appellant did not request such a referral. See COMAR § 14.09.01.08 (stating that any party may request a referral to the Insurance Fraud Division by completing the Fraud Referral form provided by the Commission). Moreover, even if such a request had been made, and denied, appellant could not appeal that denial because the refusal to make a fraud referral pursuant to Lab. Empl. § 9-310.2 does not grant or deny

a benefit to the losing party and, therefore, the losing party is not aggrieved by such an order. *See Willis v. Montgomery County*, 415 Md. 523, 548-49 (2010).

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