UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2185

September Term, 2015

CHARLISSA CRENSHAW, et al.

v.

OWENS CORNING FIBERGLASS, et al.

Wright,
Berger,
Nazarian,

JJ.

Opinion by Berger, J.

Filed: February 9, 2017

This appeal arises from a decision by the Maryland Workers' Compensation Commission ("the Commission") to deny appellant, Charlissa Crenshaw's claim for increased permanent disability benefits. Crenshaw brought this claim against appellees, Owens Corning Fiberglass Corporation and Old Republic Insurance (hereinafter, collectively referred to as "Owens Corning").

Thereafter, the Commission denied Crenshaw's motion for a rehearing and Crenshaw timely filed a Petition for Judicial Review in the Circuit Court for Howard County. The circuit court affirmed the Commission's decision on the same two grounds: First, that the claim was barred by the five-year statute of limitations; and second, that the claim was barred by the existence of a previous order from the Commission establishing a lack of causation. Crenshaw timely noted an appeal to this Court.

On appeal, Crenshaw presents four issues for our review,[1] which we combine and

[1] Crenshaw presented four issues for our review as follows:

1. Should a preliminary motion to dismiss a petition for judicial review be filed under Rule 2-322 when the motion relies on evidence outside the pleadings is (sic) relied upon?

2. If so, should the circuit court convert a preliminary motion to dismiss to a motion for summary judgment when evidence outside the pleadings is relied upon?

3. Did the circuit court err when it refused to enforce a private agreement between the parties to extend the five year statute of limitations under Labor and Employment Article 9-736?

rephrase as follows:

> 1. Whether the circuit court erred in granting appellees' motion to dismiss filed pursuant to Md. Rule 7-204, without converting the motion to a motion for summary judgment pursuant to Md. Rule 3-222.
>
> 2. Whether the circuit court erred in granting appellees' motion to dismiss on statute of limitations grounds, despite an alleged private agreement between the parties to extend the limitations period.
>
> 3. Whether the circuit court erred in granting appellees' motion to dismiss on the grounds that the doctrines of claim or issue preclusion barred appellees' claim.

Because we hold that the Commission was legally correct in finding that the five-year statute of limitations barred Crenshaw's claim, we do not reach the issue of whether claim or issue preclusion doctrines apply. For the reasons discussed below, we shall affirm the judgment of the Circuit Court for Howard County.

FACTUAL AND PROCEDURAL BACKGROUND

On April 24, 2001, Charlissa Crenshaw sustained an injury to her right knee while working for Owens Corning, for which Owens Corning initially paid her medical expenses and indemnity benefits for the time she missed from work. In a decision by the Commission on April 30, 2002, Crenshaw was awarded additional benefits for permanent partial disability for the same injury. Thereafter, Crenshaw filed a request to reopen on the

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> 4. Did the Commission and Court Err when ruling that a claim for worsening of permanency was barred under the doctrine of *Res Judicata* by virtue of a Commission Order nearly ten years old?

basis of a worsening of condition related to her right knee. On December 29, 2006, the Commission awarded Crenshaw permanent partial disability benefits in addition to those benefits awarded in the April 20, 2002 award.

Three years later, Crenshaw filed a second request for modification on the basis of a worsened condition in her right knee. A hearing before the Commission followed on February 17, 2010. The primary issue before the Commission was whether there was a causal connection between the worsened condition and the accident on April 24, 2001. Owens Corning presented evidence that Crenshaw had been in a motor vehicle accident in June of 2009, during which she sustained a fractured right foot. As part of her treatment to her right foot, Crenshaw's doctor placed her in a walking boot for eight weeks. In October of 2009, approximately three months after her motor vehicle accident, Crenshaw began seeking payment for additional medical treatment to her right knee from Owens Corning.

Based on these facts, Owens Corning argued that the motor vehicle accident and walking on the boot for an extended period was an intervening event, and therefore, broke the "chain of causation." The Commission agreed and issued an order on February 25, 2010,[2] denying Crenshaw's request for modification. In doing so, the Commission found

[2] The Commission issued its original order on February 25, 2010. The Commission subsequently revised the order on March 19, 2010. In the February 25, 2010 Order, the Commission had ordered Owens Corning to reimburse Crenshaw for past medical treatment from June 2009 and September 2009, and for mileage in the amount of $404.16. The Commission, in its March 19, 2010 revision, ordered that Owens Corning did not have to reimburse Crenshaw for the June 2009 and September 2009 medical treatments. The

that Crenshaw's recent complaints of pain in her right leg were not causally related to the work-related injury of April 24, 2001.[3] On April 22, 2010, Crenshaw timely filed a petition for judicial review of the both the February 25, 2010 and revised March 26, 2010 Orders from the Commission in the Circuit Court for Howard County.

On August 22, 2011 -- while the appeal of the February 25, 2010 Order was pending in the appellate courts -- Crenshaw filed with the Commission a request for modification of the permanency award issued in the December 29, 2006 Order. Owens Corning opposed the request, arguing that the Commission did not have jurisdiction because the same issues were pending on appeal. A hearing in the circuit court was scheduled for December 6, 2011. Prior to the hearing, however, Crenshaw, with the consent of Owens Corning, requested a continuance. Crenshaw stated as the basis for the request for a continuance that some of the issues in the current request for modification and issues on appeal were the same.[4] The circuit court granted that request on December 1, 2011 and designated the case be "reset on request only" ("ROR").

Commission's finding of no causal connection between Crenshaw's current knee pain and her April 24, 2001 injury, however, remained in tact.

[3] Crenshaw timely filed a request for rehearing with the Commission, which the Commission denied on March 26, 2010.

[4] In her request for a continuance of the December 6, 2011 hearing, Crenshaw described the basis as follows:

> Claimant's current right leg complaints which are the subject of the nature and extent (worsening) set for December 6th is, in part, an issue on appeal in the Court of Special Appeals.

Ultimately, this Court remanded the appeal of the February 25, 2010 Order back to the circuit court for further proceedings in January 2013. On May 7, 2014, the Circuit Court for Howard County granted summary judgment in favor of Owens Corning and dismissed Crenshaw's claim. No appeal from either party followed.

On July 10, 2014, however, Crenshaw again filed a request to reopen the December 29, 2006 order, having waited to pursue the request to reopen filed on August 22, 2011 until the appeal of the February 25, 2010 Order had concluded in the appellate courts. The requests were virtually identical, except that she also requested authorization for a consultation with Crenshaw's doctor. The Commission heard arguments from both parties on October 6, 2014 on four issues, including the worsening of condition and medical treatment, as well as whether the claim was barred by the February 25, 2010 Order, or by the statute of limitations.

On the same day as the hearing, the Commission issued an order finding that Crenshaw's condition had not increased as a result of the April 24, 2001 work accident and denied Crenshaw's request for prior authorization for the renewal of her pain management prescription. The Commission found that Crenshaw's claim was barred because the

> Employer and Insurer are alleging lack of Commission jurisdiction pending the appeal. Both pes agree to reset worsening on ROR ["Reset on Request"] basis after appeal is denied.

Commission had already issued an order[5] finding that Crenshaw's knee pain was not causally related to the April 24, 2001 work-related accident. Finally, the Commission found that the claim was barred by the five-year statute of limitations. Crenshaw timely filed a petition for judicial review with the circuit court. On October 16, 2014, Crenshaw filed a request for rehearing, which the court subsequently denied. In response, Owens Corning filed a "Preliminary Motion to Dismiss Claimant's Petition for Judicial Review."

On November 25, 2015, the Circuit Court for Howard County dismissed Crenshaw's petition for judicial review and remanded the case to the Commission with instructions that the Commission's October 6 and 30, 2014 orders be affirmed. The circuit court based its decision on grounds similar to the Commission's ruling -- that the five-year statute of limitations barred Crenshaw from pursuing her claim and that her claim was precluded by a previous Order from the Commission. This appeal followed.

DISCUSSION

I. Standard of Review

As provided by Md. Code, Labor and Employment Article ("L.E."), § 9-745(b), "the decision of the Commission is presumed to be prima facie correct; and [] the party challenging the decision has the burden of proof." As the Court of Appeals explained

[5] Although we refer to this issue as whether the claim was barred by the February 25, 2010 Order from the Commission, the Commission's findings mistakenly refer to the December 29, 2006 decision. The December 29, 2006 decision, however, granted additional permanent partial disability benefits to Crenshaw. Crenshaw's appeal of the Commission's decision related to its February 25, 2010 and March 19, 2010 orders.

recently, although an appellate court "review[s] agency decisions . . . in the light most favorable to the agency . . . , [w]e are under no constraint . . . to affirm an agency decision premised solely upon an erroneous conclusion of law." *Mitchell v. Maryland Motor Vehicle Admin.*, 450 Md. 282, 314 (2016) (citations and quotation marks omitted).

Subsection 9-745 of the Labor & Employment Article provides in pertinent part:

> (c) Determination by court.—The court shall determine whether the Commission:
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> > (1) justly considered all of the facts about the accidental personal injury, occupational disease, or compensable hernia;
> >
> > (2) exceeded the powers granted to it under this title; or
> >
> > (3) misconstrued the law and facts applicable in the case decided.
>
> (d) Request for jury trial.—On a motion of any party filed with the clerk of the court in accordance with the practice in civil cases, the court shall submit to a jury any question of fact involved in the case.
>
> (e) Disposition.—
>
> > (1) If the court determines that the Commission acted within its powers and correctly construed the law and facts, the court shall confirm the decision of the Commission.
> >
> > (2) If the court determines that the Commission did not act within its powers or did not correctly construe the law and facts, the court shall reverse or modify the decision or remand the case to the Commission for further proceedings.

L.E. § 9-745.

In *McLaughlin v. Gill Simpson Elec.*, we explained:

> The modality outlined in L.E. § 9–745(d) provides for an "'essential trial *de novo* [.]' " [*Simmons v. Comfort Suites Hotel*, 185 Md. App. 203, 225 (2009)] (citation omitted). Trial courts employ the trial *de novo* where the question on review is "concerned only with findings of fact." *Bd. of Educ. v. Spradlin*, 161 Md. App. 155, 173, 867 A.2d 370 (2005). When the trial court holds an essential trial *de novo* under L.E. § 9–745(d) to resolve a question of fact, the trial court has acted as a trier of fact, and, as a result, we review the decision of the trial court as we would in any other bench trial. *See Turner v. State, Office of Public Defender*, 61 Md. App. 393, 405, 486 A.2d 804 (1985). The other modality is employed where an appellate court reviews questions of legal error. *Spradlin*, 161 Md. App. at 173, 867 A.2d 370. In such cases, judicial review is controlled by L.E. § 9–745(c) and (e), "replicat[ing] the routine appeal process from administrative agency decisions generally."

206 Md. App. 242, 252–53 (2012).

II. The Circuit Court Did Not Err in Granting Owens Corning's Preliminary Motion to Dismiss.

We first address the procedural arguments Crenshaw raises on appeal to this Court regarding the circuit court's grant of Owens Corning's preliminary motion to dismiss Crenshaw's petition for judicial review. Crenshaw's first argument is that the circuit court erred when it granted Owens Corning's motion to dismiss, because Owens Corning filed the motion pursuant to Md. Rule 2-311 and L.E. § 7-204, rather than under Md. Rule 2-322. According to Crenshaw, "[i]t makes no sense to quote [Md. Rule 2-322] when the employer and insurer had at its disposal Md. Rule 2-322, on its face intended for 'Preliminary Motions.'" Although Crenshaw concedes that Owens Corning's "reliance on Rule 7-204 is arguably on point," she contends that "it is still less appropriate than [Md. Rule] 2-322."

We disagree. Title 7 of Labor and Employment Article 9 governs the procedure of the appeals process for workers' compensation cases. Pursuant to Md. Code, Lab. & Emp't Art. ("L.E."), § 9-737, the appeal of a decision of the Commission to the circuit court begins by the aggrieved party's "filing a petition for judicial review in accordance with Title 7 of the Maryland Rules." L.E. § 9-737. Like Md. Rule 2-322, Rule 7-204 is also titled "Preliminary Motion," and it governs the preliminary motions process in response to a petitioner's right to judicial review:

> (b) *Preliminary Motion*. A person may file with the response a preliminary motion addressed to standing, venue, timeliness of filing, *or any other matter that would defeat a petitioner's right to judicial review*. Except for venue, failure to file a preliminary motion does not constitute waiver of an issue.

Md. Rule 7-204(b) (emphasis added).

Second, Crenshaw contends that the circuit court should have converted Owens Corning's preliminary motion to dismiss into a motion for summary judgment, because Owens Corning attached several exhibits to the motion.[6] A motion to dismiss should be treated as a motion for summary judgment when the trial court "is presented with factual allegations beyond those contained in the complaint to support . . . a motion to dismiss and the trial judge does not exclude such matters." *Nickens v. Mount Vernon Realty Group, LLC*, 429 Md. 53, 62–63 (2012) (quoting *Okwa v. Harper*, 360 Md. 161, 177 (2000)); *see*

[6] Attached to Owens Corning's motion to dismiss were sixteen exhibits, all of which were from the record developed during the proceedings before the Commission, including previous orders from the Commission and Crenshaw's filings with the Commission for modification of previous compensation orders.

also Anne Arundel Cnty. v. Bell, 442 Md. 539, 552 (2015) (treating the circuit court's grant of the county's motion to dismiss as a grant of summary judgment because the trial court considered affidavits attached to the motion).

Documents attached to the motion that go to the claimant's right to bring a claim, however, may not convert a motion to dismiss into a summary judgment motion. *See Tomran, Inc. v. Passano*, 391 Md. 1, 10 n. 8 (2006). Moreover, in this case, all exhibits attached were taken from the agency record below and were not, themselves, in dispute. These exhibits substantiated Owens Corning's contention that Crenshaw's request to reopen the December 29, 2006 Order was not filed until over a year outside of the five-year statutory deadline, and therefore, Crenshaw was barred from bringing her claim. We hold, therefore, that the circuit court did not err when it granted Owens Corning's preliminary motion to dismiss without converting it into a motion for summary judgment.

III. The Commission Properly Denied Crenshaw's Claim as Barred by the Five-Year Statute of Limitations.

Preliminarily, we address whether Crenshaw's Request to Reopen the Commission's Order of December 29, 2006 due to a worsening of condition was barred by the statute of limitations pursuant to L.E. 9-736. Because this issue is a question of law, we review the Commission's decision *de novo*. We hold that the Commission did not err in its finding that the statute of limitations barred Crenshaw from pursuing her claim filed on July 10, 2014.

Subsection 9-736 of the Labor and Employment Article provides that "the Commission may not modify an award unless the modification is applied for within 5 years

after the latter of: (i) the date of the accident; (ii) the date of disablement; or (iii) the last compensation payment." L.E. § 9-736. It is well established that, despite the general liberal purpose of Maryland's workers' compensation reopening provision,[7] "the [l]egislature . . . deliberately compromised the general compensation purpose in the interests of the purposes served by the limitations provision." *Mayor & City Council of Cumberland v. Beall*, 97 Md. App. 597, 600 (1993) (citations omitted). Although the Commission is given broad powers to reopen and modify prior decisions in which an award has been made, it may not act outside of its statutory authority. *Jung v. Southland Corp.*, 114 Md. App. 541, 549 (1997). Indeed, our "prior appellate decisions have strictly applied the five-year bar contained in [L.E. §] 9-736." *Buskirk v. C.J. Langenfelder & Son, Inc.*, 136 Md. App. 261, 271 (2001). In other words, the general rule that the Act be interpreted liberally does not apply to the statute of limitations provision. *See Stevens v. Rite-Aid Corp.*, 102 Md. App. 636, 647 (1994), *aff'd*, 340 Md. 555 (1995).

Crenshaw makes two arguments to rebut the Commission's finding that the limitations period in L.E. § 9-736 bars her from pursuing her claim. Her first contention is that the "last date of compensation" -- the point in time when then limitations period began to run in this case -- was not properly established before the circuit court. Specifically, Crenshaw refers to the hearing on September 29, 2015 before the circuit court during which

[7] *See Stevens v. Rite-Aid Corp.*, 340 Md. 555, 565, n. 11 (1995) ("Maryland's reopening provision has been described as 'one of the widest reopening provisions in the country.") (quoting Richard P. Gilbert & Robert L. Humphreys, Jr., *Maryland Workers' Compensation Handbook* 155 (2d ed. 1993)).

Owens Corning's attorney stated that the last date of compensation occurred in January of 2007. Crenshaw argues that the defense provided no proof that the last date of compensation was January 16, 2007 before the Commission, insisting "[i]t is just based on the say so of the attorney."

Despite Crenshaw's contention that the circuit court improperly accepted this date,[8] the question is whether *the Commission* erred when it found that the statute of limitations barred Crenshaw's claim. There was no dispute, however, either before the Commission or the circuit court, that the last date of compensation was January 16, 2007. More specifically, during the October 6, 2014 hearing before the Commission, Crenshaw's attorney did not dispute this date when proffered by Owens Corning's counsel.

> MS. MCKENZIE: Your Honor, if I could respond to some of his arguments. I mean, there's also the issue that statute of limitations has run. If you get past the causal relationship argument, it's been more than five years since indemnity was paid.
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> THE COMMISSION: Oh, why didn't you make that argument first?
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> MS. MCKENZIE: Well, I raised it and you said you wanted to hear from [Mr. Gladstone].
>
> MR. GLADSTONE: Well, Commissioner, on that issue --
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> THE COMMISSION: Well, when was the last indemnity payment?
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> MS. MCKENZIE: Last indemnity was paid 1/16/07.

[8] Additionally, Crenshaw never disputed that the last date of compensation occurred on January 16, 2007, either before the Commission or before the circuit court.

> MR. GLADSTONE: Commissioner, I filed for worsening on August 22, 2011.
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> THE COMMISSION: Oh, that's what he said.
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> MR. GLADSTONE: It was continued ROR because both parties requested it be reset on worsening --
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> THE COMMISSION: All right. So he was within the five years when he filed in 2011.
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> MS. MCKENZIE: The case law says continuing it ROR is tantamount to withdrawing your issues, does not preserve the statute of limitations. That's very clear. Case law is right on point on that. It is -- bear with me, if I can put my hands on it.
>
> THE COMMISSION: Oh, I know the case.

As established at the October 6, 2014 hearing, the Commission's finding that Crenshaw's claim was barred by the statute of limitations was based on the January 16, 2007 date of last compensation.[9] Crenshaw did not object in any way to the use of this date in the Commission's determination of the limitations period.

Secondly, Crenshaw argues that the statute of limitations in this case was tolled because of a private agreement between the parties to extend the limitations period.

[9] Additionally, Crenshaw never disputed that the last date of compensation was January 16, 2007 in the circuit court. Crenshaw did not dispute this date in her opposition to Owens Corning's preliminary motion to dismiss in the circuit court. At the September 29, 2015 hearing, the court asked Crenshaw's attorney to confirm this date: "Do you agree that the last payment date was January 16th, 2007?" Crenshaw's attorney responded "Yes, Your Honor." Furthermore, Crenshaw concedes in her appeal to this Court that "the trial [c]ourt asked counsel during oral argument whether he concedes that date. For sake of argument, counsel, off the top of his head, conceded that date without investigation (he had never seen written proof only the defense say so)."

Whether or not this agreement actually existed is of no moment.[10] The Commission, itself, despite its broad powers, does not have the authority to reserve jurisdiction for the Commission or to agree to toll the statute of limitations. *See Giant Food, Inc. v. Eddy*, 179 Md. App. 633, 643 (2008); *see also Buskirk*, *supra*, 136 Md. App. at 270-72 ("The language and history of [L.E. §] 9-736 reveals the General Assembly's intent to restrict the Commission's authority to reopen prior awards.") (citations omitted). In *McLaughlin v. Gill Simpson Elec*, we explained the Commission's inability to deviate from the limitations period:

> The statute of limitations, "in one form or another, has been a part of the Workers' Compensation Act since its inception in 1914." *Vest v. Giant Food Stores, Inc.*, 329 Md. 461, 472, 620 A.2d 340 (1993) (citation omitted). "[B]y enacting a limitations provision, the General Assembly restricted the Commission's ability to exercise its authority to reopen prior awards." *Id.* at 476, 620 A.2d 340. Thus, "[a]fter five years from the last payment of compensation, [L.E.] § [9–736(b)(3)] divests the Commission of any authority to exercise its otherwise broad reopening powers."[5] *Id.* at 475, 620 A.2d 340.

206 Md. App. 242, 255 (2012).

[10] Even assuming, *arguendo*, that a private agreement between the parties could toll the limitations period, Crenshaw did not make this contention before the Commission. As the transcript from the October 6, 2014 hearing, before the Commission, *supra*, demonstrates when the Commission was presented with Owens Corning's argument that the statute of limitations expired prior to Crenshaw's filing on July 10, 2014, Crenshaw's only argument was that her Request for Modification, filed August 22, 2011 and later continued with a ROR notation, was within the five-year statute of limitations. At that time, there was no mention from either side of a "written 'agreement' between the attorneys below to 'reset worsening on ROR basis after appeal.'" As we explain, however, there is no basis to conclude that a private agreement between the parties could effect a tolling of the limitations period.

Here, Crenshaw argues that the attorneys for both sides agreed to a continuance until the conclusion of the case pending in the appellate courts. The conclusion of that case, however, did not come until after the statute of limitations had run on any request to reopen the Commission's Order of December 29, 2006. Thus, Crenshaw did not file another request to reopen that order until more than a year past the end of the five-year statutory limitations period.

To be sure, the parties may agree to request a continuance and that the proceedings be "reset on request" ("ROR"), as the parties did for the December 6, 2011 hearing before the Commission. The Commission granted the request on December 1, 2011 and included the notation "Reset on Request Only." As Crenshaw notes in her request for the continuance, the reasoning behind this request was made due to there being similar issues that, at that time, were pending in a separate claim on appeal before this Court. Critically, a "ROR" notation does not toll the statute of limitations. *See Eddy*, *supra*, 179 Md. App. at 643. Moreover, even if the Commission attempted to reserve jurisdiction for itself, that attempt would be meaningless. In *Eddy*, we cited to *Vest v. Giant Food Stores, Inc.*, 329 Md. 461, 472 (1993), in explaining the restrictions on the Commission:

> [T]he Court concluded that even if the Commission had intended to reserve jurisdiction, such a reservation "is wholly inconsistent," [*Vest*, 329 Md. App. at 466], with L.E. § 9–736, and the Commission "cannot bypass the statutory restriction on its authority," *id.* at 475–76, 695 A.2d 597, because an agency "'cannot override the plain meaning of the statute or extend its provisions beyond the clear import of the language employed.'" *Id.* at 476, 695 A.2d 597 (quoting *Dep't. of A. & T. v. Greyhound Computer Co.*, 271 Md. 575, 589, 320 A.2d 40 (1974) (other citations omitted)). The Court concluded that

> "[i]t is clear from the history of [L.E. § 9–736] that, by enacting a limitations provision, the General Assembly restricted the Commission's ability to exercise its authority to reopen prior awards." *Id.; see also Buskirk*, 136 Md. App. at 270, 764 A.2d 857 ("The language and history of section 9–736 reveals the General Assembly's intent to restrict the Commission's authority to reopen prior awards."). "The Commission cannot bypass this restriction merely by *sua sponte* inserting a clause in an award of compensation." *Id.*

Eddy, *supra*, 179 Md. App. at 643.

As we explain, *supra*, we adhere strictly to the five-year limitations period regarding the reopening of workers' compensation cases. *Buskirk*, *supra*, 136 Md. App. at 270. Just as the Commission itself "cannot bypass the statutory restriction" provided by L.E. § 9-736, neither can the parties contract around the limitations period. *Vest*, *supra*, 329 Md. App. at 475-76.

Moreover, the circuit court found that because the Commission's February 25, 2010 and March 19, 2010 Orders found no causal link between the April 24, 2001 work-related incident and Crenshaw's knee pain at that time, her claim for additional benefits was barred by claim or issue preclusion. In light of our holding that the statute of limitations, pursuant to L.E. § 9-736, bars Crenshaw from pursuing her claim, we need not reach the issue of whether Crenshaw is barred from pursuing her claim by the Commission's February 25, 2010 and March 19, 2010 Orders.

The Commission, therefore, properly determined that Crenshaw's claim fell outside of the limitations period and correctly construed the law and facts. Accordingly, we affirm the judgment of the Circuit Court for Howard County.

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