

Circuit Court for Baltimore County
Case No.03-C-17-001292

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2277

September Term, 2017

CHARLENE MORTON-WALLACE

v.

STELLA MARIS, et al.

Wright,
Reed,
Friedman,

JJ.

Opinion by Reed, J.

Filed: December 23, 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.

Charlene Morton-Wallace (hereinafter “Appellant”) filed a workers’ compensation claim against Stella Maris, her employer, and Mercy Medical Center, the insurer, (collectively “Appellees”) for an injury that occurred on July 12, 2005. The Workers’ Compensation Commission (hereinafter “the Commission”) granted Appellant’s request and found that Appellant had sustained a 1% increase in permanent partial disability to her back. The Commission also denied Appellees’ Statute of Limitations defense claim. Subsequently, Appellees filed a Petition for judicial review by the Circuit Court for Baltimore County. On November 9, 2017, the Court reversed the Commission’s decision. Judge Truffer found that the Commission “misconstrued the law and facts applicable” to the case at bar. On November 17, 2017, Appellant filed a Motion to Alter Judgment and Memorandum, which was denied on December 20, 2017. It is from this denial that Appellant files this timely appeal. In doing so, Appellant brings the following questions for our review, which we have rephrased for clarity:¹

¹ Appellant presents the following questions:

1. In a judicial review on the record of a workers’ compensation award of worsening of permanent partial disability, did the circuit court err when it questioned the commissioner’s finding as to the injured worker’s veracity and ruled that the commissioner “misconstrued the facts applicable in the case decided” but without finding the commission clearly erroneous?
2. Was it error for the trial court in a record appeal to rule that the commission “misconstrued the law applicable in the case decided” on the theory that the commissioner should have denied the request for modification under the statute of limitations defense because of the court’s concern for Maryland public policy without specifying what law she misconstrued?

- I. Did the circuit court err when it questioned the Commission's findings of fact?
- II. Did the circuit court err when it found that the Commission should have granted Appellees' Statute of Limitations defense claim?

For the foregoing reasons, we answer Question I in the negative and Question II we answer in the affirmative and reverse the decision of the circuit court and remand the case for proceedings consistent with this opinion

FACTUAL AND PROCEDURAL BACKGROUND

On July 12, 2005, Appellant injured her back while lifting a patient during the course of her employment. Appellant filed a claim with the Commission for injuries she sustained to her back and her ribs. On August 25, 2006, the Commission found that Appellant had sustained a 13% industrial loss of her body due to Appellant's back injury. The Commission also found that 6% of Appellant's injuries were due to a pre-existing condition and 0% disability was due to Appellant's rib injury. The Commission awarded Appellant \$550.45 per week for temporary total disability and \$114.00 per week for permanent partial disability. On March 25, 2011, Appellant petitioned to modify the prior award because Appellant alleged that her back injury had worsened. On June 16, 2011, the Commission found that Appellant had sustained a 19% industrial loss of use of her back with 6% due to pre-existing conditions and modified her award.

On June 24, 2016, Appellant filed for a modification for a second time. Appellant alleged that her back condition had worsened. A hearing was set for October 6, 2016, but Appellant filed a Request for Continuance. In Appellant's Request for Continuance,

Appellant stated that she filed an Issues Form “right before the statute of limitation” and requested additional time to gather her medical reports. Appellees objected to Appellant’s request. The Commission granted the request and on November 11, 2016, Appellees raised a Statute of Limitations defense claim. On January 12, 2017, Appellant was evaluated by Dr. Robert Macht who reported that Appellant’s back condition had worsened. On January 12, 2017, Dr. Macht’s impairment ratings evaluation report was provided to Appellees. On January 13, 2017, a hearing was held, and Appellees argued that Appellant’s impairment ratings report was obtained after the statute of limitations had expired. The Commission ultimately found that Appellant had sustained a 1% increase to the injuries to her back and denied Appellees’ Statute of Limitations defense claim.

Subsequently, Appellees filed a Petition for judicial review by the Circuit Court for Baltimore County. On November 9, 2017, the court reversed the Commission’s decision. The judge found that the Commission “misconstrued the law and facts applicable in the case decided.” On November 17, 2017, Appellant filed a Motion to Alter Judgment and Memorandum, which was denied on December 20, 2017. It is from this denial that Appellant files this timely appeal.

STANDARD OF REVIEW

In *Montgomery County v. Rios*, our Court clearly articulated the standard of review in our cases such as this one, where there is a an “on the record appeal from the Commission:

When reviewing workers’ compensation awards in cases where the claimant sought review on the record (rather than a de novo review involving a new evidentiary hearing), we look through the decision of the circuit court and evaluate the

Commission’s decision directly. *W. R. Grace & Co. v. Swedo*, 439 Md. 441, 452-53(2014). Our task is “to determine whether the Commission: (1) justly considered all of the facts about the... occupational disease...; (2) exceeded the powers granted to it under [the Act]; or (3) misconstrued the law and the facts applicable in the case decided.” [MD. CODE ANN. LAB. & EMPL., §9-745(c). The court must confirm the decision unless it determines that the Commission exceeded its authority or misconstrued the law or facts.” *Richard Beavers Construc., Inc. v. Wagstaff*, 236 Md. App. 1, 13, 180 A.3d 211, 2018 (citing *Uninsured Empl’rs’ Fund v. Pennel*, 133 Md. App. 279, 288-89, 754 A2d 1120 (2000) *Montgomery Cty. v. Cochran*, 243 Md. App. 102, 112, 219 A.3d 122 (2019) (alterations in original), *cert. granted*, No. 379, Sept. Term, 2019 (Md. Feb. 11, 2020). *Montgomery County v. Rios*, 244 Md. App. 629, 633 (2020)A determination that a claim is barred by the statute of limitations “is ordinarily a mixed question of law and fact.” *Dove v. Montgomery Cty. Bd. of Educ.*, 178 Md. App. 702, 712, 943 A.2d 662 (2008) (quoting *James v. Weisheit*, 279 Md. 41, 46, 367 A.2d 482 (1977)). In this case, because the parties agree that the relevant facts are not in dispute, the limitations issue is purely a question of law. Thus, “[i]n an appeal of a workers’ compensation case, when the issue presented is an issue of law, ‘we review the decision *de novo*, without deference to the decisions of either the Commission or the circuit court.’” *Zakwieia v. Balt. Cty. Bd. of Educ.*, 231 Md. App. 644, 648, 153 A.3d 888 (2017) (quoting *Long v. Injured Workers’ Ins. Fund*, 225 Md. App. 48, 57, 123 A.3d 562 (2015)).

DISCUSSION

A. Parties’ Contentions

Appellant argues that the circuit court used the wrong standard of review when it ruled in Appellees favor. Appellant contends that the circuit court should not have applied a *de novo* standard of review for an on the record appeal. Specifically, Appellant maintains that the circuit court purports to have applied MD. CODE ANN. LAB. & EMPL., §9-745 (c) as the standard of review that it applied but the court failed to do so. Appellant asserts that the circuit court applied a *de novo* standard of review because the circuit court declared it “will review the Commission’s decision *de novo*.” Appellant contends that the circuit court’s task was to determine if the Commission’s decision was “unsupported by legally

sufficient evidence.” Appellant argues that the circuit court’s memorandum “finds nothing clearly erroneous about the facts on which the [Commission] relied” on. Appellant further argues that “[i]t is very unusual for a judge without jury [sic] to reverse the [Commission] because of the deference paid to administrative agencies who are deemed to be experts in their field.” Appellant maintains that the circuit court was required to find that the Commission was clearly erroneous in its fact finding. Appellant asserts that the Commission waived the requirement for an impairment evaluation before the statute of limitation expired “because [the Commission] found convincing evidence of a change in disability with a basis in fact, as required by *Dove* and *Buskrik*.” Appellant argues that the Commission has the authority to waive strict compliance with the rules when justice so requires it. Lastly, Appellant argues that the circuit court misconstrued the law applicable to this case. Specifically, Appellant contends that the circuit court “concluded that the [Commission] generally misconstrued the controlling law without specifying [the Commission’s] error.”

Appellees respond that the circuit court applied the correct standard of review for an on the record appeal. Specifically, Appellees contend that Appellant is misguided when Appellant states that the circuit court applied a *de novo* standard of review. Appellees argue that “it is clear from the [c]ircuit [c]ourt’s Memorandum Opinion that it is referring specifically to a *de novo* review of the legal question at hand, and not the facts of the case.” Appellees maintain that the circuit court made it clear in its memorandum that the facts to this case are undisputed. Appellees argue that this case requires an on the record appeal which requires this Court to take “no new evidence” and that this Court “reviews the

proceedings before the Commission as a matter of law.” Appellees maintain that after the circuit court concluded that the facts were undisputed the circuit court then concluded that the issue before it involved “only a legal question to be reviewed *de novo*.”

Lastly, Appellees argue that the Commission misconstrued the law as it applied to the facts, when it denied Appellees’ Statute of Limitation defense claim. Appellees further argue that since the facts were undisputed and confined within the record, the circuit court was “left only with an analysis as to whether the Commission misconstrued the law.” Appellees maintain that pursuant to COMAR 14.09.09.02 Appellant was required to obtain a written impairment evaluation prior to filing an Issues Form to modify her permanent disability. Appellees allege that Appellant obtained her impairment evaluation after the statute of limitations period had run. Appellees contain that there is a five-year statute of limitations period for a claimant to file a Request for Modification of an award. Appellees assert that Appellant did not file the necessary documentation to modify Appellant’s claim before the statute of limitations had expired.

B. Analysis

i. Standard of Review during Judicial Review

Appellant maintains that the circuit court used the wrong standard of review when it ruled in Appellees’ favor. Appellant contends that the circuit court should not have applied a *de novo* standard of review for an on the record appeal. Appellant argues that the circuit court purports to have applied MD. CODE ANN. LAB. & EMPL., §9-745 (c) as the standard of review that it applied but failed to do so. Specifically, Appellant asserts that the circuit court stated in its memorandum that “[Appellees’] arguments revolve around a

of question law, specifically interpretation of a regulation applicable to the filing of workers' compensation commission claims and the application of the statute of limitations, then the court will review the Commission's decision *de novo*. *McLaughlin v. Gill Simpson Elec.*, 206 Md. App. 242, 257, 47 A.3d 1074, 1083 (2012)." Appellant also argues that the circuit court found that the Commission's finding of facts were clearly erroneous and unsupported by legally sufficient evidence.

In Maryland, there are two modalities in which a court can review a decision from the Commission. This Court has thoroughly explained in detail these two modalities. In *Board of Edu. for Montgomery County v. Spradlin*, 161 Md. App. 155 (2005), Joannie M. Spradlin ("the appellee"), filed a claim with the Workers' Compensation Commission ("the Commission"), against her employer, the Board of Education for Montgomery County ("Montgomery County") for injuries she sustained after being allegedly assaulted by her co-worker. The appellee alleged that she was physically assaulted by her co-worker on November 22, 2002, at the West Farm Depot of the Montgomery County Board of Education, where the appellee and her co-worker were employed.

The appellee appealed the Commission's decision to the circuit court. The appellee opted for a *de novo* trial without a jury. We upheld the circuit court's decision. For our purposes, the important point is that we went into a discussion about the two modalities in which a court can review a decision from the Commission. We stated that there are "two alternative modalities that an appeal from the [Commission] may follow: 'The practice is that *appeals are presented to trial courts in one of two fashions*: (1) the submission of the case to the judge on the basis of the record made before the Commission; or (2) a *de*

novo evidentiary hearing before the court sitting with or without a jury.” See *Applied Industrial Technologies v. Ludemann*, 148 Md. App. 272, 282 (2002); see also R.P. Gilbert and R.L. Humphrey, *Maryland Workers’ Compensation Handbook* (2d ed. 1993), § 17.4, p. 342. The first modality applies to the case at bar, an on the record appeal.

Pursuant to an on the record appeal we have stated that no new evidence is evaluated and the reviewing court reviews the record as a matter of law. In the Judge’s Memorandum Opinion, he stated that the standard of review to apply to the case at bar was MD. CODE ANN. LAB. & EMPL. §9-745 (c). However, the judge later states in his Memorandum Opinion:

Because [Appellees’] arguments revolve around a question of law, specifically the interpretation of regulations applicable to the filing of workers’ compensation claims and the application of the statute of limitations, the court will review the Commission’s decision *de novo*. *McLaughlin v. Gil Simpson Elec.*, 206 Md. App. 242, 257, 47 A.3d 1074, 1083 (2012).

Here, Appellees argue that Appellant filed her impairment ratings report after the statute of limitations expired pursuant to MD. CODE ANN. LAB. & EMPL. §9-736 (b)(3). Accordingly, the question of whether Appellant filed her impairment ratings report after the statute of limitations expired involves a question of law. We have repeatedly stated that where the issue “concerns a question of law, specifically one of statutory interpretation, we review the Commission’s decision *de novo*.” See *McLaughlin*, 206 Md. at 257; see also *Kelly v. Consolidated Delivery Co.*, 166 Md. App. 178, 185 (2005); *Uninsured Employers’ Fund v. Pennel*, 133 Md. App. 279, 288 (2000). We have also stated that Maryland courts apply a *de novo* standard of review of a legal question despite the modality of the appeal. *Pennel*, 133 Md. App. at 289-90. Moreover, Appellant’s argument that the circuit court

found that the Commission’s findings of fact were clearly erroneous has no merit. Specifically, the judge never stated in his opinion that the Commission’s findings of fact were clearly erroneous or unsupported by legally sufficient evidence.

Accordingly, we hold that the standard of review the circuit court applied was correct when it applied a *de novo* standard of review because the issues presented before the court involved a legal question even though it was an on the record appeal.

ii. The Law As it Applies to the Facts of the Case at Bar

Appellant argues that the circuit court misconstrued the law applicable to this case. Specifically, Appellant contends that the circuit court “concluded that the [Commission] generally misconstrued the controlling law without specifying [the Commission’s] error.”

MD. CODE ANN., LAB. & EMPL. § 9-736 (b)(3) prescribes the time period in which a claimant can modify an award. It prescribes as relevant:

Continuing powers and jurisdiction; modification

(b)(1) The Commission has continuing powers and jurisdiction over each claim under this title.

(2) Subject to paragraph (3) of this subsection, the Commission may modify any finding or order as the Commission considers justified.

(3) Except as provided in subsection (c) of this section, 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.

MD. CODE ANN., LAB. & EMPL. § 9-736 (b).

In *Buskrik v. C.J. Langenfelder & Son, Inc.*, 136 Md. App. 261, 270-71 (2001), we stated the following:

Ordinarily, remedial legislation is “construed liberally in favor of injured employees in order to effectuate the legislation’s remedial purpose.” *Marsheck v. Board of Trustees of the Fire & Police Employees’ Retirement Sys.*, 358 Md. 393, 403 (2000); see *Martin v. Beverage Capital Corp.*, 353 Md. 388, 400 (1999); *Montgomery County v. McDonald*, 317 Md. 466, 472 (1989). This general rule of construction does not apply to limitations provisions, however, including the one in question. See *Stevens v. Rite-Aid Corp.*, 340 Md. 555, 569 (1995) (“The general rule of liberal construction of the Workers’ Compensation Act is not applicable to the limitations provision of section 9-736.”).

Buskrik v. C.J. Langenfelder & Son, Inc., 136 Md. App. 261, 270-271 (2001).

Appellees maintain that Appellant was required to file her impairment ratings form prior to the statute of limitations expiring. However, Appellant argues that Appellees’ argument has no merit. Specifically, Appellant relies on our decision in *Dove v. Montgomery Co. Educ.*, 178 Md. App. 702 where we stated:

We read nothing in these regulations to require that a claimant file all supporting documentation with a request for modification of an award. Rather, at the time of filing, a claimant is only required to provide relevant medical information to the other involved parties (*i.e.*, employer and insurer) that is in his or her possession. Moreover, these regulations clearly contemplate the use of medical information received by either party after the claim is filed with the Commission.

Dove v. Montgomery Co. Educ., 178 Md. App. 702, 716 (2008).

In 2014, COMAR 14.09.09.02 was adopted and required claimants to obtain an evaluation prepared by a physician citing to the permanent impairment prior to filing an Issues Form. COMAR 14.09.09.02 prescribes as relevant:

- A. A claimant alleging permanent disability shall file with the Commission an Issues Form that:

- (1) Explicitly claims permanent partial or permanent total disability;
 - (2) Identifies the body parts at issue; and
 - (3) Identifies any alleged psychiatric disability.
- B. Prior to filing an Issues Form raising permanent disability, the party filing the issue *shall* have obtained a written evaluation of permanent impairment prepared by a physician, psychologist, or psychiatrist in accordance with Regulation .03 of this chapter.

COMAR 14.09.09.02 (emphasis added). The record shows that on August 25, 2006, Appellant was given her original award as it related to the injuries to her back. Subsequently, Appellant filed a modification of that award on June 16, 2011, less than 5 years later and before the statute of limitations expired. The record also indicates that as of June 24, 2016, more than 5 years later than her June 16, 2011, award, Appellant had not obtained a written impairment evaluation report from her physician as it related to her back. Furthermore, the record shows that on June 7, 2016, Appellant was examined by Dr. Julianne Bethea. However, her notes make no mention of any complaints Appellant made about her back. Moreover, during the Commission's hearing on January 13, 2017, Appellant conceded that Dr. Bethea notes make no mention of her back. It wasn't until January 12, 2017, more than 5 years after Appellant's June 16, 2011, modification award, that Dr. Macht evaluated Appellant and provided a report that stated that Appellant's back had worsened.

As noted above prior to the adaptation of COMAR 14.09.09.02 filing requirements were interpreted liberally. *See Dove v. Montgomery Co. Educ.*, 178 Md. App. 702, 716

(2008). Appellant testified at the Commission hearing that she reported her back condition to Dr. Bethea. However, no mention of Appellant’s back condition is made in Dr. Bethea’s report. COMAR 14.09.09.02 makes it mandatory that claimants in Workers’ Compensation claims “[p]rior to filing an Issues Form raising permanent disability, the [claimant] filing the issue *shall* have obtained a written evaluation of permanent impairment prepared by a physician.” COMAR 14.09.09.02 (B). Although COMAR 14.09.09.02 (B) did not exist when this Court decided *Dove*, before a recent development in the common law of this State, it would have been impossible to interpret the strict requirement in COMAR 14.09.09.02 (B) in Appellant’s favor. The regulation makes it clear that prior to a claimant filing an Issues Form the claimant must obtain a “written evaluation” citing to the permanent impairment from the claimant’s physician.

However, this court holds the recent case of *Montgomery County v. Rios*, dispositive of this matter. *Montgomery County v. Rios*, 244 Md. App. 629 (2020). In *Rios*, the Appellant asked the simple question that was rephrased by the court: “Is Officer Rios claim barred by the applicable five years statute of limitations because he did not obtain a medical evaluation for permanent impairment as required by COMAR until after the expiration of limitations[?]” The *Rios* Court answered the question in the negative and affirmed the Worker’s Compensation Commission’s decision entitling claimant to an increase in permanent partial disability. “We further hold that a claimant such as Rios is not required to have a written evaluation for permanent impairment ... to satisfy the caselaw’s requirement that the claimant have, at the time of filing, a ‘basis in fact’ to support his claim.” *Id.* at 636. The court examined the County’s contention “that Rios had no ‘basis in

fact’ to support his requested modification because he did not have the written evaluation of permanent impairment as of the September 15, 2017 filing.”

Like the Appellant in this case, Rios had not obtained a physician’s written evaluation of permanent impairment at the time he filed his Request for Modification. And like the Court in *Rios*, we further hold that a claimant is not required to have a written evaluation for permanent impairment ... to satisfy the caselaw’s requirement that the claimant have, at the time of filing, a “basis in fact” to support his claim. The *Rios* court relied on the decisions in *Gang*, 464 Md. 270 (2019), *Buskirk*, and *Dove*, which did not require the written impairment form. The *Rios* Court explicitly said “we reject the County’s argument in this case that, ... to satisfy the ‘basis in fact’ requirement enunciated in *Buskirk*, a claimant must have a written evaluation of permanent impairment at the time the claimant files for modification of the award.” *Id.* at 642.

The *Rios* Court said:

Instead, we read this Court’s use of the phrase “basis in fact” to mean that the claimant must have a reasonable basis for the claim at the time of filing. *The phrase does not mean that a claimant must file, with a request to modify an award, all necessary medical documentation supporting such request, or even sufficient medical documentation to establish a prima facie case for a change in the claimant’s disability status.*

Id. at 641.

Therefore, Appellant’s failure to obtain a written impairment ratings report from her physician within the statute of limitations is not a bar to the modification of Appellant’s award.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY IS
REVERSED AND THE CASE REMANDED
FOR PROCEEDINGS CONSISTENT WITH
THIS OPINION; COSTS TO BE PAID BY
APPELLEE.**