Circuit Court for Montgomery County
Case No. 422752V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2405

September Term, 2018

MONTGOMERY COUNTY, MARYLAND

v.

TIMOTHY O. JACKSON

Graeff,
Nazarian,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: September 4, 2020

Montgomery County challenges a 2016 decision by the Workers' Compensation Commission to authorize medical treatment for Timothy O. Jackson, following a 2011 workplace injury for which Jackson was previously awarded permanent partial disability. The County contends that the Commission's decision to authorize the medical treatment was legally insufficient because Jackson failed to put forth any requisite expert opinion attesting to a causal relationship between the 2011 injury and his need for treatment in 2016. Like the Circuit Court for Montgomery County, we believe that the Commission could reasonably infer a cause-and-effect relationship that merited granting the follow-up treatment. Accordingly, we affirm.

BACKGROUND & PROCEDURAL HISTORY

Appellee Timothy O. Jackson is a bus operator for Montgomery County. On October 25, 2011, Jackson injured his left knee and ankle when he fell getting off a bus during the course of work ("the 2011 accident"). In April 2013, the Workers' Compensation Commission determined that Jackson suffered 15% permanent partial disability to his left leg—including the knee and ankle—on account of the accident.

Subsequently, in December 2015, Jackson filed Issues[1] before the Commission seeking a follow-up visit with a physician. In February 2016, Jackson filed a Request for

[1] "After [a] claim [for workers' compensation] has commenced, any party may raise an issue by filing [ ] Issues[.]" Md. Code Regs. ("COMAR") 14.09.03.02B. The issues that a party may raise by filing Issues include "[w]hether the employee is entitled to temporary partial and temporary total disability benefits" and "[t]he nature and extent of a permanent disability to specified body parts[.]" COMAR 14.09.03.02C(13), (14) (Quoted in *Elec. Gen. Corp. v. Labonte*, 454 Md. 113, 119 n. 1 (2017)).

Modification; the attached Issues form sought supplemental Issues for medical expenses. After holding a hearing on June 1, 2016, the Commission found that Jackson's need for treatment was causally related to the earlier injury from the 2011 accident. The Commission's order authorized a follow-up consultation and ordered that Montgomery County (a self-insurer) pay medical expenses in accord with the Commission's Medical Fee Guide.

The County appealed the Commission's award, on the record,[2] to the Circuit Court for Montgomery County. The circuit court originally remanded the case so that the Commission could explain the basis for the finding that Jackson's requested medical treatment was causally related to the 2011 accident. In response, the Commission issued an order dated May 22, 2018; the order stated that it did not constitute "new" findings, but rather that it "explain[ed]" the previous order. In a brief explanation, the Commission found that the requested treatment was causally related to the 2011 accident because: 1)

[2] Workers' compensation cases often devote considerable attention to the various and shifting burdens of proof throughout the course of an appeal, depending on whether the party appealing a Commission decision seeks "on the record" review in the circuit court or an essentially *de novo* trial. *See, e.g.*, *Baltimore County v. Kelly*, 391 Md. 64 (2006); *S.B. Thomas, Inc. v. Thompson*, 114 Md. App. 357 (1997). Here, however, the County's argument is that there was legally insufficient evidence supporting the Commission's award, due to the absence of expert medical opinion supporting Jackson's claim. As we will discuss further, this is a question of law that we would always subject to *de novo* review on appeal, irrespective of who prevailed at the Commission or whether the circuit court action was on the record or *de novo*. *See Smith v. Howard County*, 177 Md. App. 327, 339 (2007) (quoting *Moore v. Clarke*, 171 Md. 39, 45 (1936)) ("[I]n all cases, whether there is evidence legally sufficient to support the decision of the Commission, is necessarily a matter of law to be decided by the court as any other question of law would be.").

the Commission's original permanent partial disability award was not apportioned (*i.e.*, the 15% permanent partial disability award was attributed solely to the 2011 accident, and not to any preexisting condition, such as arthritis)[3]; 2) Jackson testified that he had not had any new accidents; and 3) the Commission found Jackson's testimony about his ongoing pain in his left knee to be credible.

The County contends that this finding was legally insufficient because Jackson did not put forth expert medical evidence before the Commission attesting to the fact that his then-current need for treatment was causally related to the 2011 accident. The County adds that the Commission's finding is further undercut by the fact that *the County* submitted a medical evaluation at the hearing in which a physician concluded that Jackson's need for treatment was due to underlying arthritis, and not the 2011 accident.

The County appealed the Commission's order to the Circuit Court for Montgomery County. After holding a hearing in August 2018, the circuit court affirmed the Commission's decision.

This timely appeal followed.

DISCUSSION

Montgomery County maintains on appeal that the evidence undergirding the Commission's 2016 authorization of medical treatment was legally insufficient because

[3] We note that the original award, with respect to apportionment, stated "Apportionment – Left Ankle – No." In other words: the 2013 award did not expressly state that there was *no* apportionment with respect to the knee, but neither did it expressly state that it *was* apportioning the knee.

the issue of whether Jackson's knee pain, in 2016, was causally related to the 2011 accident for which he was awarded disability was a complicated medical question that required expert medical opinion. Based on the particular circumstances on this individual case, we do not agree.

The Workers' Compensation Act[4] establishes that an employer may remain liable for continued workers' compensation benefits, such as medical treatment, "where the employee demonstrates a worsening of his or her medical condition was caused by an accidental personal injury or occupational disease." *Elec. Gen. Corp. v. Labonte*, 454 Md. 113, 145-46 (2017). "For purposes of permanent partial disability benefits, [the question of whether] the worsening of the employee's medical condition was reasonably attributable solely to the accidental personal injury, [is a] factual matter[] for the Commission to determine in each individual case." *Id.* at 137. Though it is within the Commission's purview, as the finder of fact, to weigh competing evidence, "[t]he question of whether evidence before the Commission is legally sufficient to support its decision is a question of law." *Calvo v. Montgomery County*, 459 Md. 315, 326 (2018); *see also Baltimore County v. Kelly*, 391 Md. 64, 76 (2006) (quoting *Moore v. Clarke*, 171 Md. 39, 45 (1936)) ("The provision that the decision of the Commission shall be '*prima facie* correct' and that the burden of proof is upon the party attacking the same does not mean, therefore, that if no facts are established before the Commission sufficient to support its decision, that there is any burden of factual proof on the person attacking it,

[4] Md. Code (1993, Repl. Vol. 2008), Labor & Employment Article, § 9-101, *et seq*.

for the decision of the Commission cannot itself be accepted as the equivalent of facts which do not exist...."); *Dove v. Montgomery County Bd. of Educ.*, 178 Md. App. 702, 724-25 (2008) (When the claimant prevails before the Commission, "[t]he decision of the Commission is [the claimant's] *prima facie* case, provided that the Commission had before it the minimum evidence necessary to support an award.") (Citation and quotation marks omitted); *Bridgett v. Montgomery County*, 186 Md. App. 616, 625 (2009) ("This burden is slight, but means at least proving a case beyond speculation and conjecture.") (Citations and quotation marks omitted).

Accordingly, Montgomery County's position on appeal is that the evidence Jackson put forth before the Commission was legally insufficient to support the Commission's ultimate finding because the issue at hand—whether Jackson's knee pain, circa 2016, was causally related to the 2011 accident for which the Commission had earlier found 15% permanent partial disability—was complex enough to be a "complicated medical question" that required expert medical opinion. Pointing to the factors described by this Court in *S.B. Thomas, Inc. v. Thompson*, 114 Md. App. 357 (1997), Montgomery County argues that the length of time between the accident (2011), the Commission's original disability award (2013), the latest treatment for which the County had agreed to (2015), and the Commission hearing that is now at issue on appeal (2016) constitutes a "significant passage of time between the initial injury and the onset of the trauma" that, according to *S.B. Thomas*, creates a circumstance that will "almost always" require expert testimony:

> [T]he causal relationship will almost always be deemed a complicated medical question and expert medical testimony will almost always be required when one or more of the following circumstances is 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[.]

114 Md. App. at 382. Notwithstanding the County's invocation of *S.B. Thomas*, we believe that under the particular circumstances of the case before us, the Commission was able to reasonably infer that Jackson's knee pain was causally related to the 2011 accident, even without Jackson providing expert medical opinion to that effect at the 2016 hearing.[5]

To begin, we note that the Court of Appeals has reiterated that in workers' compensation cases it has "*not* establish[ed] a *per se* requirement for expert testimony

[5] Even if Jackson (or any claimant) were required to provide expert medical opinion, that does not necessarily mean the expert would be required to testify in-person before the Commission. In line with the "relatively informal" nature of Commission proceedings, *Kelly*, 161 Md. App. at 149, medical experts do not typically testify in person, but rather submit evaluative reports. *See* COMAR 14.09.03.09(G). And of course, an expert opinion, without more, does not necessarily suffice to prove the definitiveness of that expert's opinion. *See CSX Transp., Inc. v. Miller*, 159 Md. App. 123, 203 (2004) ("[A]n expert opinion must provide a sound reasoning process for inducing its conclusion from the factual data."); *id*. (quoting *Wood v. Toyota Motor Corp.*, 134 Md. App. 512, 525 (2000)) (An expert's "because I say so" is not sufficient as an explanation: "an expert's opinion is of no greater probative value than the soundness of his reasons given therefor will warrant.") (Quotation marks and emphasis omitted). In workers' compensation cases, the Court of Appeals has even concluded that a jury's "rational inference based upon common sense and common experience" could trump contrary medical evidence. *Atlas Gen. Indus., Inc. v. Phippin*, 236 Md. 81, 91 (1964) (discussing *Neeld Constr. Co. v. Mason*, 157 Md. 571 (1929) and *Celanese Corp. v. Lease*, 162 Md. 587 (1932)).

when a medical question was involved." *Maldonado v. Am. Airlines*, 405 Md. 467, 479 (2008) (Emphasis in original); *see also Jewel Tea Co. v. Blamble*, 227 Md. 1, 7 (1961) ("What we have said should not be taken as indicating that we conclude that all awards in cases of injuries of a subjective nature can stand only if accompanied by definitive medical testimony[.]"). Indeed, even the *S.B. Thomas* factors that the County relies upon do not unequivocally create an ironclad or bright-line "test"[6]: *S.B. Thomas* stated that "expert medical testimony will *almost* always be required when one or more of the following circumstances is present," and it did not define what constitutes a

[6] If we were to side with the County in this case—that is to say, in a situation where, except for the length of time between the initial injury and the request for subsequent medical treatment, the facts are relatively straightforward and friendly to the claimant—we would effectively be creating a new rule that elevates the first *S.B. Thomas* factor into a bright-line test in and of itself, and expert testimony would almost automatically be required in any situation once a certain period of time had passed (here, about three years after an initial award). Nor do we believe that the General Assembly would intend for us to create such a dynamic, *i.e.*, whereby claimants—often, working people of modest means—would become, in effect, automatically compelled to procure new medical opinions every time they seek continued treatment subsequent to their initial disability awards, simply because a certain fixed period of time has passed by. "Proceedings before the Commission are relatively informal to allow the parties to present their positions without undue expense and delay," *Kelly*, 161 Md. App. at 149, and the Workers' Compensation Act is intended "to provide simple, speedy and economical procedures consistent with practical justice." *Glidden-Durkee (SCM) Corp. v. Mobay Chem. Corp.*, 61 Md. App. 583, 596 (1985).

In addition, given that Jackson sought authorization for subsequent medical treatment, in considering whether the time span at issue in this case was a "significant passage of time," we note that, unlike with motions to seek increased disability, there is no statute of limitations for claimants seeking medical treatment following a disability finding. *See McLaughlin v. Gill Simpson Elec.*, 206 Md. App. 242, 260 (2012) ("The 'last [] compensation [payment]' in [L.E.] §[9-736] does not place a five year limit on the application for medical benefits[.]") (Alterations in original).

"significant passage of time." 114 Md. App. at 382 (Emphasis added). *S.B. Thomas* even went on to recognize that "[t]here can be no hard and fast rule controlling all cases."[7] *Id.* at 382-83. As such, the question of whether expert medical opinion might be required in any particular workers' compensation claim remains a case-by-case determination. *Kelly v. Baltimore County*, 161 Md. App. 128, 146 (2005), *aff'd*, 391 Md. 64 (2006) (quoting *Am. Airlines Corp. v. Stokes*, 120 Md. App. 350, 382-83 (1998)) ("Whether the causation issue is deemed a 'complicated medical question' requiring expert medical testimony cannot be reduced to a 'hard and fast rule controlling all cases.'").

Here, we believe that the cause-and-effect relationship between falling off a bus and subsequent knee pain is straightforward enough that the Commission could reasonably infer a causal relationship, even absent an expert medical opinion as to causation. As the circuit court put it when rebuffing the County's argument that this case involved a complicated medical question: "[A]t least to me [this] is not of a complex medical type . . . this is a slip and fall." The Commission heard Jackson testify that he had not had any new accidents to his knee subsequent to the Commission's earlier award in 2013, and it credited his testimony as credible. Moreover, we remain mindful that the Commission possesses specialized knowledge and understanding about these type of matters. The Court of Appeals has emphasized that the Commission "was created

[7] This Court then added: "It does appear clear, however, that when there is a genuine issue as to whether there is a causal connection between an earlier injury and a subsequent disability, in the majority of cases it will be a complicated medical question requiring, as a matter of law, expert medical testimony." *Id.* at 383.

specifically to develop an expertise in its field." *Newell v. Richards*, 323 Md. 717, 732 (1991); *see also Kelly Catering, Inc. v. Holman*, 96 Md. App. 256, 271-72 (1993) ("[I]t is, of course, beyond dispute—and therefore rarely stated—that the [Commission] possesses considerable expertise in interpreting and applying the Workers' Compensation statutes . . . ."); *Md. Bureau of Mines v. Powers*, 258 Md. 379, 384 (1970) ("The reason for giving finality to the Commission's findings is that they . . . are able to employ precisely the sort of specialized knowledge that is not available to laymen or judges.").

Additionally, here, the Commission was not only able to assess and credit Jackson's testimony regarding his pain (and his lack of further accidents to the knee since the Commission had last addressed the matter), but the Commission had the benefit of its own determination from 2013 that found Jackson had 15% permanent disability to his left knee and ankle—without apportioning that disability to any preexisting condition. To be sure, previous Commission findings are neither dispositive nor preclusive, and do not bind future Commission action. *Labonte*, 454 Md. at 143-45. However, the very fact that the Commission previously determined that Jackson suffered permanent damage to his knee, without expressly attributing that permanent damage to a preexisting condition such as arthritis, constitutes an evidentiary point in Jackson's favor—a point which, coupled with the Commission crediting Jackson's in-person testimony, allowed the Commission to reasonably infer that Jackson's pain was related to the 2011 accident. *See Kelly*, 391 Md. at 80 ("We have stated that [t]he general rule in Workmen's Compensation cases is that where there is *any* evidence from which a rational conclusion may be drawn, as

opposed to the theory of prayer for a directed verdict, the trial court must leave to the jury all considerations as to the weight and value of such evidence.") (Emphasis in original) (Citation and quotation marks omitted); *see also Dove*, 178 Md. App. at 725 (Finding sufficient evidence to support a temporary total disability award when the Commission heard evidence concerning medical steroid injections given to the claimant, the claimant's testimony that she had had no new injuries since an accident years before, and the history of the claims arising out of the accident in question, "including records of medical treatment, medical reports, and prior compensation awards."); *Gly Constr. Co. v. Davis*, 60 Md. App. 602, 607-08 (1984) (Holding that the range of disability figures contained within medical evaluations do not "limit [the] disability that may be awarded by the Commission in the first instance," because to conclude otherwise would "impermissibly shift the legal determination of 'disability' to physicians."); *Cluster v. Upton*, 165 Md. 566, 569 (1933) (The condition of the plaintiff's finger, exhibited at the trial, eleven months after the accident, justified sending the issue of permanency to the jury, notwithstanding no expert testimony) (cited by *Desua v. Yokim*, 137 Md. App. 138, 147 n. 10 (2001)).

In contrast, cases that the County cites to support its position are distinguishable. For instance, although *Kantar v. Grand Marques Cafe*, 169 Md. App. 275, 278 (2006), concerned a claimant seeking increased disability six years after a slip and fall, in that case "counsel for the employer and insurer pointed out that [the claimant] had a significant history of non-accident-related conditions, both before and after the [original

WCC] order. These included coronary artery bypass surgery in 2000; ongoing treatments for diabetes, hypertension, and thyroid conditions; and surgery to relieve carpal tunnel conditions." Additionally, unlike in *Grand Marques Cafe* (where the claimant testified that she had not sought treatment related to the workplace accident since the time she received her original award from the Commission), medical records show here that Jackson has sought ongoing treatment subsequent to the Commission's 2013 award (*i.e.*, the County agreed to medical treatment in March and April 2015).

Next, although in *American Airlines Corporation v. Stokes* this Court determined that "evidence, including expert medical testimony, establishing the possibility of an alternative theory of causation may be the decisive factor that transforms a non-medically complicated question of causation, requiring no expert medical testimony, into a complicated medical question," 120 Md. App. at 363, the particular circumstances of that case revealed that "[t]he appellee had a long [20-year] history of chronic back problems that presented a far more likely explanation for his ultimate disability than the modest strain he suffered on [the date of the accident, while loading and unloading luggage at BWI.]" *Id.* at 361. Furthermore, this Court in *Stokes* concluded that an expert opinion was necessary, in that case, in part because of the weight given to the fact that the Commission had previously and expressly found that there was no causal connection between the incident at issue and the subsequent disability (*i.e.*, in *Stokes* it was the claimant who appealed the Commission's express finding of non-causation to a jury trial). *Id*. at 360. Finally, *Giant Food, Inc. v. Booker*, 152 Md. App. 166 (2003),

concerned whether an employee's accidental exposure to freon gas caused adult on-set asthma approximately 14 months after exposure—a considerably more complicated medical issue than the slip and fall at issue here.

As a final note: we recognize that this is a close case, and that, given the passage of time, the facts approach the point where determining a causal relationship could be construed as complicated enough so as to require an expert opinion. In light of the closeness of the issue before us, we remain mindful that in such workers' compensation cases, any ambiguity or "tie" goes to the claimant. *See*, *e.g.*, *Mayor & City Council of Balt. v. Cassidy*, 338 Md. 88, 97 (1995) ("Any uncertainty in the [Workers' Compensation] law should be resolved in favor of the claimant") (Citations and quotation marks omitted); *Calvo*, 459 Md. at 324 ("The Act is to be construed as liberally in favor of injured employees as its provisions will permit in order to effectuate its benevolent purposes as remedial social legislation.") (Citation and quotation marks omitted). After all, although the Act is not meant to saddle employers with unjustified costs, the Workers' Compensation Act is ultimately "remedial, social legislation designed to protect workers and their families from various hardships that result from employment-related injuries." *Livering v. Richardson's Rest*., 374 Md. 566, 574 (2003).

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