

Circuit Court for Montgomery County  
Case No. 481176V

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND\*

No. 351

September Term, 2022

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IN THE MATTER OF JOSEPH CONRAD

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Graeff,  
Beachley,  
McDonald, Robert N.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Graeff, J.

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Filed: May 3, 2023

\*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

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.

This case arises from an award by the Maryland Workers' Compensation Commission (the "Commission") of partial death benefits to appellant, Janet Conrad, as a dependent of her late husband, Joseph Conrad, who was an employee of Montgomery County, Maryland (the "County"). Following the Commission's decision, Ms. Conrad petitioned for judicial review in the Circuit Court for Montgomery County, which granted the County's motion for summary judgment. The court found that Ms. Conrad "was partially dependent on the decedent at the time of [his] death," but Ms. Conrad "became wholly self-sufficient immediately after the decedent's death," and therefore, the Commission erred in awarding Ms. Conrad death benefits.

On appeal, Ms. Conrad presents the following questions for this Court's review, which we have rephrased, as follows:

1. Did the circuit court err in finding that Ms. Conrad was no longer a dependent based on what occurred after Mr. Conrad's death?
2. Did the circuit court err in determining Ms. Conrad's dependency status under Md. Code Ann., Lab. & Empl. Art. ("LE") § 9-682 (2016 Repl. Vol.), rather than LE § 9-681?
3. Did the circuit court err in considering Ms. Conrad's receipt of Social Security benefits to bar her, as a matter of law, from a finding of dependency?
4. Did the circuit court err in considering pension benefits that Ms. Conrad received as a beneficiary to bar her, as a matter of law, from dependency?

For the reasons set forth below, we agree that the circuit court erred in its analysis regarding Ms. Conrad's dependency status, and therefore, we shall reverse the judgment of the circuit court.

## **FACTUAL AND PROCEDURAL BACKGROUND**

On May 14, 2019, Ms. Conrad filed a claim with the Commission, seeking dependency benefits arising out of her husband's death from Chronic Obstructive Pulmonary Disease (COPD). Mr. Conrad, a firefighter for Montgomery County, was diagnosed with COPD and lung cancer in 2012, and he passed away in 2017. Prior to his death, the Commission awarded him workers' compensation benefits for these conditions.

On February 18, 2020, the Commission held an evidentiary hearing to determine Ms. Conrad's eligibility for death benefits and apportionment of any award of benefits between the County and the Subsequent Injury Fund ("SIF").<sup>1</sup> The County advised that the issues involved the "calculation of the dependency benefits," specifically, whether Ms. Conrad "would be a wholly or a partially dependent" beneficiary. The parties agreed that, notwithstanding Ms. Conrad's dependency status, the benefits award was subject to an offset under LE § 9-503, and accordingly, the total award could not exceed Mr. Conrad's last weekly salary.<sup>2</sup>

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<sup>1</sup> The Subsequent Injury Fund ("SIF") is a specially funded Maryland State agency managing a non-budgeted fund that pays workers' compensation benefits to eligible claimants. Md. Code Ann., Lab. & Empl. Art. ("LE") §§ 10-214–215, 10-218. Although there were separate arguments by SIF below, those arguments are not presented on appeal.

<sup>2</sup> LE § 9-503 (2016 Repl. Vol.), provides a presumption of occupational disease for a number of occupations, including firefighters. Under LE § 9-503(e), a beneficiary of an employee who falls under the presumption is entitled to that employee's workers' compensation and retirement benefits, but the total award must not exceed the employee's last weekly salary.

Ms. Conrad testified that she relied on her husband's income and retirement benefits because she had not been employed at the time of his diagnosis, his death, or for most of their 43 years of marriage; she was only employed for three years, between 2000 and 2003, when she worked for AmeriCorps and Frederick County Public Schools. She acknowledged that she began receiving monthly Social Security benefits in 2015, and she began receiving spousal benefits under her husband's Social Security and retirement benefits after his death in 2017.

On April 1, 2020, the Commission submitted an order with findings on 13 issues, including Ms. Conrad's dependency, and the amount of the offset under LE § 9-503. The Commission found that Ms. Conrad was partially dependent on her husband at the time of his death, and it awarded her \$462.73 in weekly compensation benefits to be paid by the County, and \$115.68 to be paid by the SIF, not to exceed a total of \$75,000.00. This award was based on Mr. Conrad's average weekly wage of \$1,939, subject to verification.<sup>3</sup> The Commission further ordered the County to pay \$1,113 in funeral expenses.

On April 6, 2020, Ms. Conrad filed a petition for judicial review in the Circuit Court for Montgomery County. On February 7, 2022, the court held a hearing on Ms. Conrad's motion for summary judgment and the County's cross-motion for partial summary

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<sup>3</sup> The Commission used Mr. Conrad's last average weekly wage of \$1,939 to determine the maximum available award, pursuant to LE § 9-682(c), which states: "The maximum weekly death benefit payable under this section shall equal two-thirds of the average weekly wage of the deceased covered employee, but may not exceed two-thirds of the State average weekly wage." Although the parties disputed the amount of Mr. Conrad's weekly wage during the Commission hearing, they do not do so on appeal.

judgment, specifically on the issue of “whether or not [Ms. Conrad] can be classified as wholly dependent on the deceased as well as . . . the time of determining that.”

Ms. Conrad argued that the Commission erred by calculating her dependency from the time of Mr. Conrad’s death in 2017, rather than “the time of the disablement” in 2012. Although Ms. Conrad was receiving approximately \$10,000 per year in Social Security benefits at the time of her husband’s death, she was not receiving Social Security benefits at the time of his disablement, and her Social Security benefits “ha[d] nothing to do with [Mr. Conrad’s] work-related condition or the benefit that they’re receiving.” Moreover, Ms. Conrad contended that her Social Security benefits should not preclude her from being found wholly dependent because she was only receiving \$9,000 a year in these benefits, after taxes, and “she wouldn’t have been able to subsist entirely” on this amount alone.

The County argued that the relevant time to determine Ms. Conrad’s dependency status was at the time of Mr. Conrad’s death, even if she was a dependent at the time of his disablement. Upon Mr. Conrad’s death, Ms. Conrad began receiving his total pension by way of a survivor annuity, and therefore, she became “wholly self-supporting.” The County pointed to financial statements from 2017, which indicated that Ms. Conrad was entitled to approximately \$63,000 from her husband’s pension benefits, \$22,000 as the beneficiary of his Social Security benefits, and \$10,900 from her own Social Security benefits.<sup>4</sup> With respect to the Social Security benefits, the County contended that such

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<sup>4</sup> Mr. and Ms. Conrad filed a joint 2016 federal income tax return, marked as Exhibit 2, reflecting \$63,498 earned in total pensions and annuities, \$28,662 earned in Social

benefits are income for purposes of workers' compensation because these benefits constitute a source of income in other areas of Maryland law. It would be a "windfall" to award Ms. Conrad additional benefits because, if she were to receive death benefits on top of the pension and Social Security benefits, her annual income would amount to \$150,000 or more. Indeed, the County stated that, in 2018, the first full year after her husband's death, Ms. Conrad had a higher income than her husband had before his death; between her husband's pension and the couple's combined Social Security benefits, Ms. Conrad's income exceeded Mr. Conrad's approximately \$97,000 in earnings from before his death.

On April 1, 2022, the court granted the County's motion with respect to Ms. Conrad's "partial dependency at the time of Mr. Conrad's death" and the Commission's "payment of death benefits to an individual who was not entitled to them under the law." The court noted that the County had conceded that Mr. Conrad's disease was compensable, and that Ms. Conrad was his dependent, but it contested whether Ms. Conrad's dependency was whole or partial at the time of Mr. Conrad's death. The court affirmed the Commission's determination that, under LE § 9-682, Ms. Conrad's dependency should be based on her husband's date of death, rather than his disablement. The court also agreed with the Commission's finding that Ms. Conrad's "Social Security Retirement benefits barred a finding of whole dependency." Specifically, Ms. Conrad was partially dependent

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Security benefits, and a total joint income of \$93,738. Additionally, Mr. and Ms. Conrad each received 2016 Social Security Benefit Statements, marked as Exhibits 4 and 5, respectively. These statements showed that Mr. Conrad received \$22,812, and Ms. Conrad received \$10,908.

because her Social Security benefits, including both her personal benefits as a primary claimant and those that she received as her husband's beneficiary, constituted 35 percent of the household income, and were therefore a "consequential source or means of maintenance."

The court concluded, however, that it was erroneous for the Commission to award benefits, even though Ms. Conrad was partially dependent at the time of her husband's death. The court noted that, although the Commission may require the County to pay weekly death benefits "during the period of partial dependency," pursuant to LE § 9-682, the court found that Ms. Conrad "became wholly self-supporting immediately after the death of her husband," when Ms. Conrad began receiving her husband's County pension benefits, plus increased Social Security benefits as the surviving spouse. In 2018, Ms. Conrad's income was \$100,096, an amount that exceeded the couple's household income prior to Mr. Conrad's death by \$2,877. The court stated that "the legislature did not intend for the Act to make surviving spouses better off than they were during their married life," and the Commission may require the County to pay weekly death benefits only during the period of partial dependency. The court found that the Commission's award exceeded its powers by awarding weekly benefits beginning November 27, 2017, when Ms. Conrad "was wholly self-sufficient, no longer partially dependent, and no longer eligible for [workers' compensation] death benefits." The court concluded that, although the Commission correctly found that Ms. Conrad was partially dependent at the time of her husband's death, that partial dependency did not continue after his death, and the

Commission erred, as a matter of law, in awarding her benefits. The court granted the County's motion for summary judgment and ordered that the case be remanded to the Commission for a new order based upon the court's findings.

This appeal followed.

### STANDARD OF REVIEW

On review of a decision by the Commission that has been appealed to the circuit court, "(1) the decision of the Commission is presumed to be prima facie correct; and (2) the party challenging the decision has the burden of proof." LE § 9-745(b). This is true for a Commission decision that was "first reviewed by the [c]ircuit [c]ourt during a *de novo* trial proceeding" on a motion for summary judgment. *Shapiro & Duncan, Inc. v. Payne*, 215 Md. App. 674, 681 (2014) (citing *Gen. Motors Corp. v. Bark*, 79 Md. App. 68, 73 (1989)). See *Montgomery County v. Maloney*, 245 Md. App. 369, 380 (2020) (The Commission's findings are prima facie correct whether the petitioning party requests, "under [LE] § 9-745(c) and (e), a 'routine' administrative appeal, in which the circuit court 'reviews the record of the proceeding before the Commission and decides, purely as a matter of law, whether the Commission acted properly,'" or, "under [LE] § 9-745(d), 'a trial which essentially is *de novo*.'" (quoting *Bd. of Educ. for Montgomery Cnty. v. Spradlin*, 161 Md. App. 155, 167, 172 (2005)). Where, however, the petitioner in the circuit court is the party claiming workers' compensation benefits, as opposed to the employer,

the provision [stating that the decision of the Commission shall be *prima facie* correct], as a practical matter, is largely meaningless. The claimant has the burden of producing a *prima facie* case before the trial court, lest he suffer



a directed verdict against him, just as he, as the original proponent, had that same burden before the Commission.

*Gen. Motors Corp.*, 79 Md. App. at 79.

In a situation such as this case, where a petitioner seeks *de novo* review of the Commission decision and then appeals to this Court, “we are called upon to determine whether each respective tribunal was legally correct.” *Shapiro*, 215 Md. App. at 681–82. First, “we must make a threshold determination as to whether a genuine dispute of material fact exists. Only where such a dispute is absent will we proceed to review determinations of law.” *Matter of Collins*, 468 Md. 672, 685 (2020). “The Commission’s decision ‘is presumed to be prima facie correct,’ LE § 9-745(b)(1), but this presumption does not extend to questions of law, which we review *de novo*,” i.e., “without deference to the legal decisions of the Commission or circuit court.” *Id.* (quoting *Johnson v. Mayor & City Council of Balt.*, 430 Md. 368, 376–77 (2013)); *Norman-Bradford v. Balt. Cnty. Pub. Sch.*, 237 Md. App. 235, 240, *cert. denied*, 460 Md. 508 (2018) (citing *Long v. Workers’ Ins. Fund*, 225 Md. App. 48, 57 (2015), *aff’d*, 448 Md. 253 (2016)). *Accord Baltimore County v. Kelly*, 391 Md. 64, 67, 73 (2006) (reviewing *de novo* the circuit court’s “disposition on a motion for summary judgment filed by the petitioning party” in a workers’ compensation case). “In that mode, we do not interpret the Workers’ Compensation Act in a vacuum; rather, we review the Commission’s interpretation of a statute it enforces. We ‘determine if the administrative decision is premised upon an erroneous conclusion of law,’” and likewise, whether the circuit court’s “legal conclusions were legally correct.” *Shapiro*, 215 Md. App. at 682 (quoting *W.M. Schlosser Co. v. Uninsured Employers Fund*, 414 Md. 195,

204 (2010)); *Johnson*, 430 Md. at 376–77. *Accord Wal Mart Stores, Inc. v. Holmes*, 416 Md. 346, 359 (2010).

### DISCUSSION

Ms. Conrad contends that the circuit court erred in granting summary judgment in favor of the County and ruling that she was not entitled to the payment of any death benefits. She argues that the court erred in failing to focus on her dependency “at the time of [Mr. Conrad’s] disablement” and the “time of death,” and instead, the court improperly focused on the “time *after* death.” She further asserts that the court erred in considering her receipt of Social Security benefits in its assessment of her dependency status.

The County does not dispute that Ms. Conrad was a dependent at the time of disablement and the time of Mr. Conrad’s death. The County contends, however, that as found by the circuit court, Ms. Conrad “became wholly self-supporting once Mr. Conrad died and his pension” became her pension. Therefore, it argues that the court properly found that the Commission’s award of continuing benefits was erroneous. The County further argues that Social Security benefits are income that properly may be considered in determining the issue of dependency under the Workers’ Compensation Act (the “Act”).

The Act “is intended to protect workers and their families from the various hardships that result from employment-related injuries.” *Martin v. Beverage Cap. Corp.*, 353 Md. 388, 398 (1999). In analyzing the issue here, we begin with LE § 9-679, which states that, with respect to firefighters and other covered employees who have an occupational disease presumed to be suffered in the line of duty:

(b) Except as otherwise provided in this subtitle, the Commission shall determine all questions of partial or total dependency in accordance with the facts of each case that existed:

(1) at the time of the occurrence of the accidental personal injury that caused the death of the covered employee; or

(2) on the date of disablement from the occupational disease that caused the death of the covered employee.

LE §§ 9-681 and 9-682 discuss the amount of dependency benefits if the covered employee dies. Section 9-681 addresses wholly dependent individuals, and it provides, in relevant part:

(b) If there are individuals who were wholly dependent on a deceased covered employee at the time of death resulting from an accidental personal injury or occupational disease, the employer or its insurer shall pay death benefits in accordance with this section.

(c)(1) Except as provided in paragraph (2) of this subsection, the death benefit payable under this section shall equal two-thirds of the average weekly wage of the deceased covered employee, but may not:

- (i) exceed the State average weekly wage; or
- (ii) be less than \$25.

(2) If the average weekly wage of the deceased covered employee was less than \$25 at the time of the accidental personal injury or the last injurious exposure to the hazards of the occupational disease, the weekly death benefit payable under this section shall equal the average weekly wage of the deceased covered employee.

(d) Except as otherwise provided in this section, the employer or its insurer shall pay the weekly death benefit:

- (1) for the period of total dependency; or
- (2) until \$45,000 has been paid.

(e) If a surviving spouse who was wholly dependent at the time of death continues to be wholly dependent after \$45,000 has been paid, the employer or its insurer shall continue to make payments to the surviving spouse at the same weekly rate during the total dependency of the surviving spouse.

(f)(1) If a surviving spouse who is wholly dependent at the time of death becomes wholly self-supporting before \$45,000 has been paid, the employer or its insurer shall continue to pay death benefits until \$45,000 has been paid.

(2) If a surviving spouse who is wholly dependent at the time of death becomes partly self-supporting, the employer or its insurer shall continue to make payments to the surviving spouse in accordance with § 9-682 of this subtitle.

Finally, LE § 9-682(d) states: “Except as otherwise provided in this section, the employer or its insurer shall pay the weekly death benefit: (1) for the period of partial dependency; or (2) until \$75,000 has been paid, including any payments made during a period of total dependency under § 9-681 of this subtitle.”

Section 9-682 addresses partly dependent individuals, and it provides, in relevant part, as follows:

(b) The employer or its insurer shall pay a death benefit in accordance with this section if:

(1) there are no individuals who were wholly dependent on the deceased covered employee at the time of death, but there are individuals who were partly dependent; or

(2) a surviving spouse who was wholly dependent on the deceased covered employee at the time of death becomes partly self-supporting.

(c)(1) The maximum weekly death benefit payable under this section shall equal two-thirds of the average weekly wage of the deceased covered employee, but may not exceed two-thirds of the State average weekly wage.

(2) The weekly death benefit payable under this section shall be the percentage of the maximum weekly death benefit under paragraph (1) of this subsection that:

(i) the weekly earnings of the deceased covered employee bears to the combined weekly earnings of the deceased covered employee and the partly dependent individuals; and

(ii) does not exceed the maximum weekly death benefit.

These statutes contemplate a two-step process for determining the initial receipt and continuation of workers' compensation death benefits. *Martin*, 353 Md. at 400. The first step is to determine, pursuant to LE § 9-679, whether the surviving spouse was partially or wholly dependent on the date of disablement, and therefore, entitled to receive benefits up to the \$45,000 maximum. *Id.* at 400, 411 (“[LE] § 9-679 mandates application of the facts existing at the time of the accident that caused the death of the employee in dependency determinations.”). *Accord Nat’l Corp. for Hous. P’ship Meadowood Townhouse v. Keller*, 353 Md. 171, 176–77 (1999) (“[T]he fact of dependency, with respect to death benefits, is determined and becomes fixed as of the time of the death-causing injury.”).

In *Keller*, 353 Md. at 176–77, the Supreme Court of Maryland explained that, despite language pertaining to the employee’s death, the death benefits provisions of LE §§ 9-678 through 9-686 define dependency based on the date of the employee’s accident, i.e., the date of disablement.<sup>5</sup> The Court stated:

[LE] § 9-679 . . . provides that “the Commission shall determine all questions of partial or total dependency in accordance with the facts of each case that

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<sup>5</sup> At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022.

existed: (1) at the time of the occurrence of the accidental personal injury that caused the death of the covered employee; or (2) on the date of disablement from the occupational disease that caused the death of the covered employee.”

The case law, from the earliest days of the workers’ compensation law, makes clear that, notwithstanding the statutory references to dependency at the time of the employee’s death, the fact of dependency, with respect to death benefits, is determined and becomes fixed as of the time of the death-causing injury. *See Adleman v. Ocean Acc. & Guar. Corp.*, 130 Md. 572 (1917); *Community Baking Co. v. Reissig*, 164 Md. 17 (1933); *Meyler v. Mayor and City Council*, 179 Md. 211 (1941). The fact of dependency—whether the claimant was wholly or partly dependent on the employee—is therefore to be determined in accordance with the circumstances existing at the time of the accident, not at the time of death.

*Keller*, 353 Md. at 176–77. With respect to the “direct or implicit reference in [LE] §§ 9-681 and 9-682 to the claimant being a dependent at the time of the employee’s death,” this language “means only that, to be entitled to the death benefit, the claimant must survive the employee.” *Id.* at 177.

Here, there is no dispute that Ms. Conrad, who was not employed at the time of her husband’s disablement, was wholly dependent on Mr. Conrad at the time of disablement. Accordingly, she was entitled to \$45,000 in whole dependency benefits under LE § 9-681.<sup>6</sup> The circuit court erred in ruling that “to award the appropriate level of death benefits, the Commission shall determine a surviving spouse’s level of dependency based on the parties’ situation at the time of the covered employee’s death, not on the date of disablement,” and therefore, that Ms. Conrad was not entitled to any dependency benefits.

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<sup>6</sup> LE § 9-681(d) states that “the employer or its insurer shall pay the weekly death benefit: (1) for the period of total dependency; or (2) until \$45,000 has been paid.”

The parties agreed at oral argument that the County had fulfilled its obligation under the Commission's order because the County paid Ms. Conrad approximately \$50,000, i.e., the difference between the \$75,000 awarded and the amount of the offset under LE § 9-503. They also agreed that the County cannot seek reimbursement of funds already paid. What happens next is up to Ms. Conrad. The Supreme Court in *Martin*, 353 Md. at 400, explained that the next "step comes into play after the initial \$45,000 has been paid out." At that point, "[i]f the claimant petitions for further benefits, step two requires the surviving spouse to prove that he or she 'continues to be wholly dependent' under [LE] § 9-681(d)." *Id.* at 400-01. If Ms. Conrad believes that she continues to be dependent, wholly or partially, she may petition the Commission for continuing benefits.

**JUDGMENT OF THE CIRCUIT COURT  
FOR MONTGOMERY COUNTY  
REVERSED; CASE REMANDED TO THAT  
COURT WITH INSTRUCTIONS TO  
VACATE THE COMMISSION'S ORDER  
AND ISSUE AN ORDER CONSISTENT  
WITH THIS OPINION. COSTS TO BE  
PAID BY APPELLEE.**