

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1210

September Term, 2023

IN THE MATTER OF
DAWN COUSINS

Leahy,
Reed,
Ripken,

JJ.

Opinion by Ripken, J.

Filed: October 16, 2024

This appeal arises from a workers' compensation claim filed by Appellant, Dawn Cousins ("Cousins") against Appellee, Montgomery County, Maryland, ("County") for Appellant's right hip condition that she alleged was causally related to a prior work injury which was sustained while she was employed by the Montgomery County Board of Education. The Maryland Workers' Compensation Commission ("Commission") determined that Cousins' right hip condition was not causally related to her 2007 work injury and denied her request for temporary total disability benefits from the period of February 16, 2022, to June 10, 2022.¹ Cousins then appealed to the Circuit Court for Montgomery County, and the case proceeded to a jury trial in July of 2023.

At the close of evidence, the County moved for a directed verdict and the court reserved ruling on the motion. At the conclusion of the trial, the jury found that Cousins' right hip condition was not causally related to her 2007 work injury but found that she was temporarily and totally disabled from February 16, 2022, to June 10, 2022. The County then made a Motion for Judgment Notwithstanding the Verdict ("JNOV"), upon which the court again reserved its ruling. The court dismissed the jury and ordered the parties to provide their positions on the issues raised pursuant to the JNOV motion. The court subsequently issued an opinion and order, concluding that the jury's finding was legally and factually inconsistent and granted the County's Motion for JNOV and affirmed the Commission's decision.

¹ As we shall explain *infra*, Cousins had hip surgery on February 16, 2022. Cousins alleges that she was temporarily and totally disabled from the date of her hip surgery through June 10, 2022.

Cousins noted this timely appeal and presents the following issue for our review:² Whether the circuit court properly granted the County’s motion for JNOV after the jury found that Cousins was entitled to temporary total disability benefits following its finding that Cousins’ right hip condition was not causally related to a previous work injury. For the reasons to follow, we shall affirm.

FACTUAL BACKGROUND

Cousins was employed by the Montgomery County Board of Education as a food service manager at an elementary school when she injured her back at work on October 7, 2007, while “throwing . . . food in the trash.” At trial, Dr. Fred Mo (“Dr. Mo”) testified on behalf of Cousins and Dr. Kenneth Tepper (“Dr. Tepper”) testified on behalf of the County.³ Dr. Mo, an orthopedic surgeon who specializes in orthopedic spine surgery, testified that he treated Cousins for at least six years.⁴ According to Dr. Mo, Cousins had lumbar radiculopathy and significant lower back pain, which, by 2021, caused Cousins to

² Rephrased from:

Did the Circuit Court for Montgomery County, Maryland err when it granted the Employer’s Motion for Judgment Notwithstanding the Verdict and affirmed the Maryland Workers’ Compensation Commission’s decision that Ms. Cousins’ right hip condition was not causally related to her work injury sustained on October 25, 2007 and as a result she is not entitled to temporary total disability benefits after February 15, 2023?

³ Both Dr. Mo and Dr. Tepper testified via video deposition at trial, and both doctors were accepted as expert witnesses in the field of orthopedics and orthopedic surgery.

⁴ Dr. Mo testified that although he did not know the initial date he first treated Cousins, he had “been following her for a long time, at least, probably, six years.” The record further indicates that Dr. Mo saw Cousins “about a dozen times” from May 21, 2020, through July 7, 2021.

have developed an antalgic gait, meaning she had “a painful gait” and was “unsteady on her feet.” On June 17, 2021, Dr. Mo performed surgery, referred to as a decompression infusion, of a portion of Cousins’ lumbar spine. Dr. Mo testified that around the time of Cousins’ surgery, she “had a few falls[,]” although Dr. Mo did not know how many.⁵ On cross-examination, Dr. Mo conceded that he did not produce a written report stating that Cousins’ hip condition was causally related to her back condition arising out of a 2007 work injury.

Cousins testified that she had eight medical procedures performed on her lower back. On February 16, 2022, following Cousins’ 2021 back surgery with Dr. Mo, Dr. William Postma (“Dr. Postma”) performed right hip surgery to repair Cousins’ right labrum.⁶

Dr. Tepper, an orthopedic surgeon, saw Cousins on behalf of the County ten times from 2014 through 2021 and performed multiple independent medical evaluations (“IMEs”)⁷ of Cousins. Dr. Tepper also reviewed Cousins’ medical records through May of

⁵ Cousins subsequently testified that she had two falls in 2019 prior to the surgery by Dr. Mo and additional falls since then. Cousins did not provide a specific number of falls or the dates of the additional falls.

⁶ Dr. Postma did not testify at trial.

⁷ According to Dr. Tepper, an “IME is where . . . someone who is already under treatment by a different provider or physician . . . comes to [him] to be evaluated.” Dr. Tepper explained that during an IME, he has access to all of a patient’s existing medical records from their treating physician. Dr. Tepper explained the process of conducting an IME: “I review the records; I get a history from that individual as to what happened, what body parts were injured, what they may still be experiencing, what treatment they’ve had to date. I then perform a guided physical exam to those body parts[.]”

2023. Based on Dr. Tepper’s evaluations and his review of her medical records, he opined that Cousins’ right hip condition and the treatment she received for her right hip was not causally related to the October 2007 work injury to her back. During Cousins’ ten visits with Dr. Tepper over the course of seven years, Cousins did not complain of a right hip injury or falls. Dr. Tepper testified that Cousins’ leg “strength was intact[,]” that she did not have a “significantly altered gait[,]” and that “[h]er leg wouldn’t just give out on her to cause her to fall.” Moreover, during his physical examinations of Cousins, Dr. Tepper never identified any issue with her right hip. Dr. Tepper opined that Cousins’ right “labral tear and underlying . . . femoroacetabular impingement,⁸ were not related or causally related to the . . . 2007[] incident or her ongoing issues with her low back.” Rather, Dr. Tepper explained that the cause of Cousins’ right hip labral condition was simply “a function of aging and time.”

After Cousins’ hip surgery, her treatment entailed a course of physical therapy. Cousins received temporary total disability benefits from August 27, 2018, to December 3, 2021, because of her 2007 work injury. Although Cousins did not return to work as a food service manager with the County following her injury in 2007, she was employed elsewhere as a receptionist in medical billing and records departments and had worked for three different employers since that time.

⁸ Dr. Tepper explained that femoroacetabular impingement is a condition that, “as one goes through adolescence and the hip develops, that either the ball and/or socket are abnormally shaped.” In Cousins’ case, “the socket covers too much of the ball. So as the ball rotates up, there’s abnormal contact, and it’s one of the . . . largest risk factor[s] for developing a labral tear[.]” Additionally, Cousins’ ball is not as round as “ideal” which created more stress on her labrum, leading to the labral tear.

DISCUSSION

A. 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.” Md. Code Ann. § 9-745(b) of the Labor and Employment Article (“LE”); *Balt. Cnty. v. Quinlan*, 466 Md. 1, 10 (2019). Where, as here, the employer prevails before the Commission and the claimant elects to appeal, the process is “an essentially *de novo* trial method[.]” *Balt. Cnty. v. Kelly*, 391 Md. 64, 75 (2006).

When reviewing the decision of an administrative agency, “this Court ‘looks through’ the decision of the circuit court, applying the same standards of review to determine whether the agency itself erred.” *Matter of Homick*, 256 Md. App. 297, 307 (2022) (quoting *Brandywine Senior Living at Potomac LLC v. Paul*, 237 Md. App. 195, 210 (2018)). A reviewing court should give “considerable weight” to an administrative agency’s “interpretation and application of the statute which the agency administers[.]” *Balt. Police Dep’t v. Brooks*, 247 Md. App. 193, 214 (2020). We “afford the Commission a degree of deference, as appropriate, in its formal interpretations of the Workers’ Compensation Act.” *Greer v. Montgomery Cnty.*, 246 Md. App. 245, 249 (2020) (quoting *Long v. Injured Workers’ Ins. Fund*, 448 Md. 253, 264 (2016)). However, “we may always determine whether the administrative agency made an error of law.” *Id.*

Appellate courts review the “trial court’s grant or denial of a motion for JNOV, made pursuant to Maryland Rule 2-532” to determine whether it was legally correct. *Sage*

Title Grp., LLC v. Roman, 455 Md. 188, 201 (2017). We analyze the trial court’s decision “viewing the evidence and the reasonable inferences to be drawn from it in the light most favorable to the non-moving party[.]” *Scapa Dryer Fabrics, Inc. v. Saville*, 418 Md. 496, 503 (2011). In reviewing a trial court’s decision to grant or deny a motion for JNOV, “we are concerned with the dichotomy between the role of the judge, to apply the law, and the role of the jury, to decide the facts.” *Blue Ink Ltd. v. Two Farms, Inc.*, 218 Md. App. 77, 91 (2014). “[O]nly where reasonable minds cannot differ in the conclusions to be drawn from the evidence . . . does the issue in question become one of law for the court and not of fact for the jury.” *Id.* (citation omitted). While we review the trial court’s legal findings de novo, *Cunningham v. Baltimore Cnty.*, 246 Md. App. 630, 689 (2020), “we must determine whether on the evidence presented a reasonable fact-finder could find the elements of the cause of action by a preponderance of the evidence.” *Blue Ink Ltd.*, 218 Md. App. at 91 (quotation marks and citation omitted).

Applying this standard, we conclude that the circuit court correctly set aside the jury’s verdict where the jury’s finding that Cousins was entitled to temporary total disability benefits was legally and factually inconsistent with the jury’s first finding that Cousins’ right hip condition was not causally related to her 2007 work injury.

B. Parties’ Contentions

Cousins asserts that there was substantial evidence before the jury to support the conclusion that she was temporarily totally disabled because of her back injury. Cousins argues that it was exclusively up to the jury, not the court, to determine if they believed the testimony she gave and that of Dr. Mo. Cousins argues that even if there was not sufficient

evidence to causally connect the hip condition with her initial back injury, the jury could have concluded that her other symptoms, such as painful gait and leg weakness, were attributable to the initial back injury and that she was entitled to temporary total disability. According to Cousins, the circuit court’s determination that the evidence in the case did not support a temporary total disability finding as a result of Cousins’ back injury amounted to the court substituting its view of the evidence for that of the jury and thus, the court’s decision must be reversed.

The County contends that the circuit court properly overturned the jury’s verdict as to temporary total disability for two reasons: because (1) the grant of temporary total disability contradicted the jury’s finding that Cousins’ hip condition was unrelated to her prior back injury; and (2) Cousins did not present sufficient evidence to show entitlement to temporary total disability benefits at either the Commission or at trial. The County asserts that once Cousins’ hip injury was found not related to the prior back injury, the precondition of allowing temporary total disability no longer existed.

C. Analysis

- 1. The jury’s finding that Cousins was entitled to recover for temporary total disability contradicted its finding that Cousins’ right hip condition was not causally related to the 2007 work injury.*

The trial in this case encompassed Cousins’ appeal of the Commission’s order finding that Cousins’ right hip condition was not causally related to her 2007 work injury, the denial of “authorization for physical therapy to the right hip[,]” and temporary and total disability benefits from February 16, 2022, to June 10, 2022. The Commission’s order specifically stated that the basis for its denial was Cousins’ lack of a “medical causation

opinion” connecting Cousins’ hip condition to the 2007 work injury. The lack of a causal relationship between the right hip condition and the 2007 work injury resulted in a denial of right hip treatment *and* temporary total disability benefits. According to the County, since the causal relationship was not proven for Cousins’ right hip, it was also not proven for the temporary total disability benefits that were related to Cousins’ right hip treatment.

As stated in the opinion of the circuit court granting the County’s JNOV:

The jury’s verdict determined that the right hip condition was not causally related to the 2007 work injury. Therefore, the focus shifts to whether [Cousins’] entitlement to [temporary total disability] benefits was predicated upon a finding that the right hip condition is causally related to the original work injury, or if there was sufficient evidence for the jury to find that [Cousins] was [temporarily and totally disabled] for the period of February 16, 2022, to June 10, 2022 . . . due to the 2007 work injury, but independent of [Cousins’] right hip condition.

LE section 9-618 provides that temporary total disability benefits are those paid to a covered employee who is injured due to an accidental personal injury or an occupational disease. The Supreme Court of Maryland has defined temporary total disability as “the healing period during which the employee is unable to work due to the [employee’s] injury.” *Phuonglan Ngo v. CVS, Inc.*, 214 Md. App. 406, 417 (2013) (emphasis omitted) (quoting *Buckler v. Willett Const. Co.*, 345 Md. 350, 360 (1997)). Temporary total disability benefits are those paid to an injured worker who is “wholly disabled and unable to work” due to the injury. *Buckler*, 345 Md. at 355 (internal citation omitted). “An employee capable of performing marketable, sedentary duties, cannot be classified as totally disabled under the Workers’ Compensation Act.” *Montgomery Cnty. v. Buckman*, 333 Md. 516, 529 (1994).

Relevant to our analysis are two surgeries that Cousins underwent: (1) the June 17, 2021 back surgery performed by Dr. Mo; and (2) the February 16, 2022 surgery performed by Dr. Postma to repair Cousins’ right hip labrum. At trial, Dr. Mo did not offer any testimony as to Cousins’ ability to work from February 16, 2022 through June 10, 2022 (hereinafter also referred to as the “2022 period”) or work limitations pertaining to either her right hip or back. While Cousins emphasizes that Dr. Mo performed surgery on her in 2021 and she had been experiencing pain, Dr. Mo did not present any testimony concerning Cousins’ work requirements or her inability to perform such duties during the 2022 period. Moreover, the trial record is clear that Cousins’ testimony regarding her course of physical therapy following her hip surgery was solely related to her 2022 hip surgery. There was no indication that Cousins’ physical therapy was related to her 2021 back surgery, which stemmed from her 2007 work injury.

The record supports and we agree with the circuit court’s observation that, “[i]n sum, there was no testimony from Dr. Mo that [Cousins] had been totally disabled due to her June 17, 2021, back surgery or from her early 2022 surgery to repair her right labrum.” Nor was there testimony from Cousins “of her ability to work or of any disability during the period between the two pertinent surgeries.” Cousins’ entitlement to temporary total disability benefits hinged on her right hip condition being causally related to her 2007 work injury. *See* LE § 9-618 (establishing that temporary total disability benefits are those paid to a covered employee who is injured *due to* an accidental personal injury); *see also* *Buckler*, 345 Md. at 355 (stating that temporary total disability benefits are paid to an injured worker who is unable to work *because of the employee’s work injury*).

Because the jury first found that Cousins' right hip condition was not causally related to her 2007 work injury, its finding that she was temporarily and totally disabled for the 2022 period is illogical and contradictory to its first finding. Thus, we conclude that the trial judge did not err in granting the County's motion for JNOV because, taking the evidence in the light most favorable to Cousins, she was not temporarily and totally disabled during the 2022 period because of her 2007 work injury. Therefore, she was not entitled to receive temporary total disability benefits.

2. *Cousins did not present sufficient evidence to demonstrate entitlement to temporary total disability benefits at the Commission or at trial.*

Alternatively, the County notes, even if Cousins had proven that her right hip condition was causally related to her 2007 work injury, she was additionally required to show that she was disabled in order to be entitled to temporary total disability benefits. Cousins argues that there was evidence from which the jury could have found that her 2007 work injury left her temporarily and totally disabled. Cousins asserts that even setting aside the hip condition, her own testimony, as well as Dr. Mo's testimony concerning her painful gait and leg weakness, was sufficient for the jury to conclude that she was temporarily and totally disabled because of her 2007 work injury during the 2022 period. The County responds that the jury's verdict is invalid because Cousins failed to present sufficient evidence that she was medically disabled during the 2022 period either at the Commission or at trial. Thus, the County asserts that the jury could not decide that Cousins' temporary and total disability was related to her 2007 work injury because the issue was not presented to or decided on by the Commission.

Cousins cites *Maldonado v. American Airlines*, 405 Md. 467, 481 (2008) in support of her contention that the nature and extent of an injured person’s injuries can be decided by a jury absent expert medical testimony. However, *Maldonado* does not stand for that proposition. The *Maldonado* holding is limited in that “expert vocational testimony is not *per se* required to determine industrial loss” in workers’ compensation cases. *Id.* at 481. In *Maldonado*, both parties presented expert medical testimony regarding Maldonado’s alleged physical impairment. *Id.* at 471–73. Despite Cousins’ claim, the *Maldonado* Court did not conclude that expert medical testimony is not required to establish a causal connection and/or the inability to work due to an injury. *See generally, id.*

In *S.B. Thomas, Inc. v. Thompson*, this Court considered whether expert medical testimony is required to establish a causal connection in cases involving a “complicated medical question.” 114 Md. App. 357, 361 (1997). In that case, we stated that:

[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[.]

Id. at 382. Here, the Commission correctly stated that Cousins could not “prevail without a medical causation opinion that brings in a new body part”—her right hip—“14 years after [the 2007] accident.”

Moreover, a court reviewing the Commission’s decision considers only those “matters covered by the issues raised and decided below or on relevant matters as to which

there was evidence before the Commission.” *Trojan Boat Co. v. Bolton*, 11 Md. App. 665, 670 (1971) (quoting *Pressman v. State Accident Fund*, 246 Md. 406, 449 (1967)). At the Commission, Cousins argued that she was entitled to temporary total disability benefits for her hip condition, which she claimed was “a consequence of the original injury.” However, in the hearing before the Commission, Cousins failed to present any evidence of a causal connection between her right hip condition and her 2007 work injury. To be sure, the Commission explicitly indicated that Cousins did not offer a causal-connection opinion or any medical support for her assertions. Since there was no such medical causation evidence presented to the Commission, the jury could not consider such and could not award temporary total disability benefits for Cousins’ right hip condition.

In sum, we conclude that the circuit court correctly determined that the jury’s finding that Cousins was temporarily and totally disabled during the 2022 period is legally and factually inconsistent with its finding that Cousins’ right hip condition was not causally related to her 2007 work injury. Therefore, the circuit court properly granted the County’s Motion for JNOV.

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