Circuit Court for Allegany County
Case No. C-01-CV-22-000027

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 2052

September Term, 2022

MICHAEL BAYLOR

v.

SUNDRY CLAIMS BOARD

Tang,
Albright,
Kehoe, S.

JJ.

Opinion by Kehoe, J.

Filed: February 5, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

The appellant, Michael Baylor, an incarcerated individual at the Western Correctional Institution ("WCI") in Cumberland, injured his hand while working in the Maryland Correctional Enterprises ("MCE")[1] Furniture Shop. Mr. Baylor's left hand was "caught in a band saw resulting in an injury to his left index, middle and ring fingers." He then filed a claim with the Sundry Claims Board ("the Board") and requested permanent partial disability benefits. Without holding a hearing, the Board determined that Mr. Baylor was not entitled to permanent partial disability benefits. Mr. Baylor petitioned for judicial review in the Circuit Court for Allegany County, which affirmed the Board's decision.

[1] Md. Code. Corr. Servs. §3-502 sets forth the legislative policy for MCE:

> The purpose of this subtitle is to establish a Maryland Correctional Enterprises organization in the Division that:
>
> (1) is financially self-supporting, generates revenue for its operations and capital investments, and reimburses the Division at a reasonable rate for services exchanged between the Division and Maryland Correctional Enterprises;
>
> (2) provides meaningful work experiences for incarcerated individuals that are intended to allow incarcerated individuals to improve work habits, attitudes, and skills for the purpose of improving the employability of the incarcerated individuals on release;
>
> (3) seeks to develop industries that provide full-time work experience or rehabilitation programs for all eligible incarcerated individuals;
>
> (4) operates correctional industries in an environment that resembles as closely as possible the environment of private sector business operations; and
>
> (5) makes the Division responsible for and accountable to the Secretary and the Governor for the Maryland Correctional Enterprises program.

In his *pro se* informal brief filed in this Court, Mr. Baylor presents one issue[2] for our review, which we have clarified and reformatted into two questions:

I. Did the Board have jurisdiction over Mr. Baylor's permanent partial disability claim?

II. Did the Board err in failing to hold a hearing before determining that Mr. Baylor was not entitled to permanent partial disability benefits?

For the reasons discussed in this opinion, the Board erred in failing to hold a hearing on Mr. Baylor's permanent partial disability claim. Thus, we shall reverse the judgment of the circuit court. We shall remand the case to the circuit court with instructions to vacate the Board's decision and to remand the case to the Board for further proceedings consistent with this opinion.

BACKGROUND

Mr. Baylor has been committed to the custody of the Division of Correction since 1997. On August 8, 2018, Mr. Baylor was working in a MCE furniture shop and "using the table saw to cut boards for a production order" when he injured his "[l]eft hand (pointer,

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[2] Mr. Baylor's informal contains the following general arguments:

1. "The Circuit Court err[ed] by allowing the Sundry Claims Board to exceed its statutory authority or jurisdiction[.]"

2. "Given the chance to have a hearing and call witnesses to substantiate the injury and disability, applicant asks this court to review the circuit court's decis[io]n, de novo, reverse the case and reman[d] to that court with instruction to reverse the decision and vacate the Sundry Claims Board judgment[.]"

See Mitchell v. Yacko, 232 Md. App. 624, 643 n.12 (2017) (observing that this Court liberally construes filings by *pro se* litigants).

middle, ring fingers)[.]" Mr. Baylor "indicated that he was using his hand to push the wood into the saw, and a piece of wood got stuck which pulled his hand directly into the blade." He was transported to the Western Maryland Regional Medical Center where he was treated by Dr. Emme Jackson.

Dr. Jackson's operative report contained the following "indication for procedure[:]" Mr. Baylor "cut the dorsal aspect of his ring, long and index fingers, resulting in severe injury to the digits. . . . Bony loss was seen in all digits, more prevalent in the ring and long fingers[.]" As a result, Dr. Jackson recommended "operative exploration, repair of the tendons, repair of the bony fractures[,] . . . washout of the wound and closure." As to the index finger, Dr. Jackson repaired the open mallet deformity, repaired the tendon, and closed the dorsal laceration site. As to the long finger, "[a] bone anchor was used to reattach the central slip." For the ring finger, the finger was realigned to the best of Dr. Jackson's ability, but "exact alignment could not be obtained" "[d]ue to bony loss[.]"

On January 7, 2020, Mr. Baylor submitted a "Claim for Compensation" to the Sundry Claims Board.[3] Mr. Baylor's claim form reported the following earnings. Before his incarceration, Mr. Baylor worked in construction and earned "[b]etween $160 - $210" per week. While incarcerated, before his injury, Mr. Baylor earned $5.40 per day and approximately $21.60 per week in the MCE shop. After his injury, he reported that he was employed in the dietary unit of the Division of Correction and earned $5.70 per week. He also stated that his weekly earnings were reduced by $95 because of his injury.

[3] The statutes and regulations governing the Sundry Claims Board are contained in Md. Code. Corr. Servs. §§ 10-301 *et seq.* and COMAR 12.05.01.01 *et seq.*

On January 21, 2020, the Board sent a letter to the warden of WCI to request Mr. Baylor's "base and medical files, including those of the third party medical provider[.]" Mr. Baylor contacted the Board by mail in February 2020, July 2020, and October 2020, requesting an update on the status of his claim. Then, on October 27, 2020, the Board sent a letter to Mr. Baylor that contained the following information:

> The [Board] is in receipt of all base and medical files for your claim. Due to precautions in place to protect staff from the Covid-19 Pandemic the [Board] is not currently holding hearings. You may opt to submit your testimony in writing and forgo the hearing process. The [Board] would review the files and your written testimony to make a legal decision. If you would like to take advantage of this process please send your full written testimony to the [Board]. This will not impair any of your rights under Correctional Services, Title 10, Subtitle 3, Section 305.

On November 30, 2020, Mr. Baylor sent a letter to the Board with his "sworn testimony as to what had occur[r]ed to the best of [his] remembrance[.]" In that letter, Mr. Baylor described the extent of the injury and alleged that MCE's negligence had caused his injury. He alleged that the managers in the MCE shop had failed to install a safety guard on the table saw.

On February 10, 2021, Mr. Baylor sent another letter to the Board and stated: "I last received from your office . . . a letter asking me to send the claim board a written testimony as to what occurred on August 8, 2018. . . . I sent the said information that was requested. Moreover, I'm now asking what is the status on my case?" Mr. Baylor was concerned that his claim would be time-barred if the Board did not respond promptly, writing: "I would like to hear from your office real soon, I have less than 4 (four) months before my time run out (statu[t]e of limitation)."

On April 5, 2021, the Board wrote to Mr. Baylor to "acknowledge receipt of [his] letter . . . dated February 10, 2021." The Board, however, confirmed that "no written testimony has been received by our office at this time" and asked Mr. Baylor to "[p]lease resubmit written testimony as soon as possible."

Still concerned about the timeliness of his claim, Mr. Baylor wrote another letter to the Board inquiring as to the status of his case on November 15, 2021. He stated: "Due to the Coronavirus I understand that your office have [sic] been closed, but now that the State is back up and running I would like to know the status of my case?"

The Board then issued its decision and order on December 6, 2021. The Board ruled that Mr. Baylor had "elected to waive a hearing and instead, rely on the documents and records obtained by the Sundry Claims Board in support of the claim." Those documents and records included:

1. The Claim for Compensation and other required forms filed January 15, 2020;
2. Medical Records from the medical ward at WCI detailing the nature and course of treatment provided to the Claimant arising from his injury;
3. Payroll and Wage Records from the Department of Public Safety and Correctional Services . . .; and
4. Various incident reports and witness statements concerning the injury.

The Board recited the following elements required to award compensation under Md. Code, Corr. Servs. ("CS") § 10-304:

1. The claimant at the time of the injury was an [incarcerated individual[4]] in . . . a correctional facility in the Division of Correction;
2. The [incarcerated individual] was engaged in work for which wages or a stipulated sum of money was paid by a correctional facility;

[4] Effective October 1, 2023, the General Assembly altered the term "inmate" to be "incarcerated individual." 2023 Md. Laws Ch. 721.

3. The [incarcerated individual] sustained a permanent partial or permanent total disability
   a. As a result of a personal injury arising out of an in the course of work for which wages or a stipulated sum of money was paid by a correctional facility; and
   b. That incapacitated the individual's earning power in that type of work.[5]

As for the first two elements, the Board found that Mr. Baylor "was an [incarcerated individual] in a correctional facility and was engaged in work for which he was paid wages." As for the third element, the Board concluded that Mr. Baylor suffered a personal injury arising out of his work when "he was injured as a result of his left hand getting caught in a band saw resulting in an injury to his left index, middle and ring fingers."

The Board, however, found that "[t]here is no indication from the medical records that supports the conclusion that the injury suffered [Mr. Baylor] prevents him from working much less incapacitates his earning power in the type of work he was performing when injured." According to the Board, "[t]he wage and employment records of WCI and MCE reveal that [Mr. Baylor] returned to work in various capacities after his injury and has continued to work, with the exception of brief periods from May 14, 2019 through July 10, 2019 and from January 22, 2020 through April 30, 2020." The Board concluded that "[t]here is no evidence to indicate that these periods, when he did not work, were the result of or due to his injury." The Board noted that "the medical records also contain a reference dated January 11, 2019, where [Mr. Baylor] reported he was able to work." As a result, the Board denied Mr. Baylor's claim, ruling that "there is insufficient evidence to determine

[5] The full text of CS § 10-304(2)(ii) states: "that incapacitated the individual or materially reduced the individual's earning power in that type of work."

that [Mr. Baylor] is permanently partially disabled and that the injury materially reduced the earning power of [Mr. Baylor] to perform the work he was assigned at MCE."

Mr. Baylor filed a petition for judicial review in circuit court on January 18, 2022. After a hearing, the court issued an order on December 14, 2022, affirming the Board's decision. According to the court, My Baylor "waived his right to a board hearing and elected to rely on documentation and records obtained by the Sundry Claims Board." The court also found "that there is substantial evidence in the record to support the Board's determination that the petitioner failed to support his claim for permanent partial disability."

We shall apply additional facts as they become relevant to the issues.

STANDARD OF REVIEW

When this Court "reviews the final decision of an administrative agency, we look through the circuit court's decision and evaluate the decision of the agency." *Maryland Dep't of the Env't v. Assateague Coastal Tr.*, 484 Md. 399, 446 (2023). "When evaluating an agency decision, a court examines (1) whether the record as a whole contains substantial evidence that supports the agency's findings and conclusions, and (2) whether the agency premised its decision on an erroneous conclusion of law." *King v. Helfrich*, 263 Md. App. 174, 205-06 (2024).

"When a party challenges the agency's interpretation of a statute it administers, the court must determine 'how much weight to accord that interpretation, keeping in mind that it is always within the court's prerogative to determine whether an agency's conclusions of law are correct.'" *Id*. at 451 (quoting *Md. Dep't of Env't v. Cnty. Comm'rs of Carroll*

Cnty., 465 Md. 169, 203-04 (2019)). Applying a sliding-scale approach, "'[w]e give more weight when the interpretation resulted from a process of reasoned elaboration by the agency, when the agency has applied that interpretation consistently over time, or when the interpretation is the product of contested adversarial proceedings or formal rule making.'" *In re Md. Off. of People's Couns.*, 486 Md. 408, 441 (2024) (quoting *Assateague Coastal Tr.*, 484 Md. at 451-52). Moreover, "[w]hen the construction of an administrative regulation is an issue—as opposed to a question of statutory interpretation—'deference is even more clearly in order.'" *Assateague Coastal Tr.*, 484 Md. at 452 (quoting *Kor-Ko Ltd. v. Maryland Dep't of the Env't*, 451 Md. 401, 412 (2017)).

DISCUSSION

I.

First, Mr. Baylor appears to suggest that the Board lacked jurisdiction to consider his claim. Mr. Baylor cites *Jennifer v. Department of Corrections* for its holding that the Workers' Compensation Act and the Sundry Claims Board Act are to be read in harmony with one another. 176 Md. App. 211, 220 (2007). Mr. Baylor points to CS § 10-308(d), which provides as follows: "An incarcerated individual working under the supervision of Maryland Correctional Enterprises *in the Federal Prison Industry Enhancement Program*: (1) is excluded from the jurisdiction of the Board; and (2) shall be administered benefits as provided under Title 9 of the Labor and Employment Article." (Emphasis added.) By contrast, CS § 10-308(c) states as follows: "The compensation authorized under this subtitle is the exclusive remedy against the State for a claim that falls within the jurisdiction of the Board." That subtitle governs the Sundry Claims Board. *See also Dixon v. Dep't of*

Pub. Safety & Corr. Servs., 175 Md. App. 384, 414 (2007) (holding that the "appellant's injury fell within the Board's jurisdiction" because the appellant met the criteria of CS § 10-304, which governs the Board's administration of benefits).

CS § 10-305 allows for incarcerated individuals to file claims with the Board. CS § 10-307 requires the Board to investigate each claim, to make findings of fact and to disposed of the claim by approving it, approving it with conditions or disapproving it. Section 9-221 of the Labor & Employment Article ("LE") provides that the Workers' Compensation Commission has jurisdiction over incarcerated individuals who are:

> (1) working for a board of county commissioners, a county council, or a county roads board if:
> (i) the county pays the prisoner a wage or stipulated sum; and
> (ii) the prisoner sustains permanent partial or permanent total disability or dies, as a result of an accidental personal injury; or
> (2) engaged in work while under the supervision of Maryland Correctional Enterprises in the Federal Prison Industry Enhancement Program as provided in § 10-308(d) of the Correctional Services Article.

CS § 10-301 provides that the terms "permanent partial disability" and "permanent total disability" have the same meanings given under the Workers' Compensation Article (Title 9, Subtitle 6 of the Labor & Employment Article.)

The Federal Prison Industry Enhancement Program ("FPIEP") allows for opportunities for incarcerated individuals to work for private entities so that they can learn marketable skills.[6] Employment through FPIEP would be covered by the Workers'

[6] *See* the Department of Public Safety and Correctional Services' website regarding the Prison Industry Enhancement Program https://www.mce.md.gov/About-MCE/Prison-Industry-Enhancement-Program-PIECP (last visited on January 25, 2024). The website explains the scope of the program.

Compensation Act under LE § 9-221. It is undisputed that Mr. Baylor worked under the direct supervision of the MCE at the time of his injury. There is no evidence that he was working in the more specialized FPIEP.[7] Thus, we cannot determine that the Board lacked jurisdiction over Mr. Baylor's claim.

II.

Next, Mr. Baylor claims that the Board was required to hold a hearing on his claim for permanent partial disability. He contends that the Board erred in depriving him of the opportunity to present testimony and cross-examine witnesses before rendering a decision. The Board responds that neither the Sundry Claims Board Act nor the corresponding regulations required the Board to hold a hearing before deciding Mr. Baylor's claim. In addition, the Board asserts that Mr. Baylor knowingly and voluntarily waived any opportunity for a hearing. Lastly, the Board argues in the alternative that even if the Board erred in failing to hold a hearing, such error was harmless.

"In general, while administrative agencies are not bound by the technical common law rules of evidence, they must observe the basic rules of fairness as to parties appearing before them." *Schultz v. Pritts*, 291 Md. 1, 7 (1981). "Procedural due process, guaranteed to persons in this State by Article 24 of the Maryland Declaration of Rights, requires that administrative agencies performing adjudicatory or quasi-judicial functions observe the basic principles of fairness as to parties appearing before them." *Maryland State Police v.*

[7] It would be cold comfort to Mr. Baylor if it were found that the Sundry Claims Board did not have jurisdiction over his claim because the time requirements set forth in LE § 9-701 *et seq*. may have passed.

Zeigler, 330 Md. 540, 559 (1993). Indeed, administrative agencies "'must observe the basic rules of fairness as to parties appearing before them so as to comport with the requirements of procedural due process[.]'" *Matter of White*, 458 Md. 60, 98 (2018) (quoting *Travers v. Baltimore Police Dep't*, 115 Md. App. 395, 411 (1997)). When "an administrative body is resolving disputed questions of adjudicative facts concerning particular parties, it is engaged in a quasi-judicial function *which requires a hearing*." *Maryland-Nat'l Capital Park & Planning Comm'n v. Friendship Heights*, 57 Md. App. 69, 82 (1984) (emphasis added).

The Board argues that the Sundry Claims Board Act does not require the Board to hold hearings. CS § 10-306(a) states as follows: "With respect to any claim, a member of the Board *may*: (1) administer oaths; and (2) issue subpoenas to compel: (i) the attendance of witnesses; and (ii) the production of pertinent records or documents." (Emphasis added.) According to the Board, the word "may" in CS § 10-306(a) supports its argument that hearings are not required. That statute, however, authorizes the Board to perform certain quasi-judicial functions; it does not relieve the Board of its obligation to conduct hearings.

COMAR § 12.05.01.03 provides that if a hearing is to be held, the Board must provide notice of the time place and purpose of the hearing. COMAR § 12.05.01.06, *inter alia*, sets forth a schedule for compensation for injured incarcerated persons.

The legislative history of CS § 10-306 supports our interpretation. In 1999, Maryland General Assembly enacted CS § 10-306, which is derived without substantive change from former Art. 41, § 4-701(c). *See* Acts 1999, c. 54, § 2. The Revisor's Note to the 1999 Session Law stated as follows:

> In subsection (a)(2) of this section, the reference to the authority of a member of the Board to "issue subpoenas" to compel the attendance of witnesses and the production of documents is added to state expressly that which was only implied in the last sentence of former Art. 41, § 4-701(c) which authorized the Board to petition a circuit court to enforce a subpoena, as set forth in subsection (b) of this section.[8]

See also Thanner Enters., LLC v. Baltimore Cnty., 414 Md. 265, 276 (2010) (recognizing that "[a]n agency's authority extends only as far as the General Assembly prescribes"). In *Comptroller of Treasury v. Blanton*, our Supreme Court reaffirmed that Revisor's Notes express legislative intent. 390 Md. 528, 538 (2006). The Revisor's Note affirms that CS § 10-306(a) authorizes the Board to exercise subpoena power and administer oaths.

Subsection (b) of CS § 10-306 confirms our analysis and provides as follows: "The Board may petition a circuit court for an order of contempt against a person who refuses to: (1) comply with a subpoena issued by a Board member; (2) comply with a request by a Board member to be sworn to an oath; or (3) answer as a witness before the Board." Subsections (a) and (b) authorize the Board to perform certain quasi-judicial functions. Neither subsection allows the Board to forgo hearings. *See also Baltimore Cnty. v. Ulrich*, 244 Md. App. 410, 433 (2020) (observing that all sections of an Act must be read together, and the statute must be read as a whole).

We disagree with the Board's contention thar Mr. Baylor waived any opportunity for a hearing. "Waiver is the 'intentional relinquishment of a known right, or such conduct as warrants an inference of the relinquishment of such right, and may result from an express

[8] The text of the Revisor's Note is available at: Archives of Maryland - Session Laws, 1999 https://msa.maryland.gov/megafile/msa/speccol/sc2900/sc2908/000001/000796/html/am796--832.html.

agreement or be inferred from circumstances.'" *Anderson v. Great Bay Solar I, LLC*, 243 Md. App. 557, 607 (2019) (quoting *Creveling v. Gov't Employees Ins. Co.*, 376 Md. 72, 96 (2003)). "Waiver, therefore, hinges on the intent of the party and requires an unequivocal demonstration that waiver was intended." *Id*. at 607.

After submitting his claim in January 2020, Mr. Baylor contacted the Board by mail in February 2020, July 2020, and October 2020 to request an update on the status of his claim. The Board then wrote a letter to Mr. Baylor in October 2020, stating that the Board was not holding hearings because of COVID-19 precautions and that he could "opt to submit [his] testimony in writing and forgo the hearing process." The Board advised Mr. Baylor that if he would like to "take advantage of this process[,]" he could send his written testimony to the Board and none of his rights under the CS § 10-305 would be impaired. To be sure, Mr. Baylor then sent his written testimony to the Board in November 2020. Nevertheless, the record establishes that Mr. Baylor did not waive his right to a hearing for at least two key reasons.

First, the Board never advised Mr. Baylor that he had a right to a hearing where he "shall be present . . . and shall be allowed to present testimony or cross-examine witnesses[.]" COMAR 12.05.01.04. Although we need not decide whether such notice is always required, the lack of that notice here is a factor within our waiver analysis because waiver involves "'the relinquishment of a *known* right.'" *Park Plus, Inc. v. Palisades of Towson, LLC*, 478 Md. 35, 52 (2022) (quoting *Charles J. Frank, Inc. v. Associated Jewish Charities of Balt., Inc.*, 294 Md. 443, 449 (1982)) (emphasis added).

Second, Mr. Baylor did not "unequivocal[ly] demonstrate[e] that waiver was intended." *Anderson*, 243 Md. App. at 607. Although Mr. Baylor sent a letter with his sworn testimony, he never stated that he wished to forgo the hearing process. Instead, Mr. Baylor repeatedly expressed concern that the Board's inaction was affecting the timeliness of his claim under a statute of limitations. In his July 2020 letter to the Board, he asked for an estimate of when a hearing may be scheduled because he believed that the statute of limitations was expiring and that "August 8, 2020 leaves [him] with a year left to file [his] claim for compensation." In his October 2020 letter, he asked for an estimate of when a hearing may be scheduled because he believed that his "statute of limitations is running out." In his February 2021 letter, Mr. Baylor wrote that he believed that he had "less than 4 (four) months" to hear back from the Board before his claim would be time-barred. Mr. Baylor's decision to send his sworn testimony appears to have been caused by his mistaken belief about an expiring statute of limitations. For these reasons, Mr. Baylor did not waive his right to a hearing.

The Board argues that even if it erred in failing to hold a hearing, any error was harmless. "In Maryland, the harmless error doctrine has been applied in judicial review of agency decisions." *State Bd. of Physicians v. Bernstein*, 167 Md. App. 714, 764 (2006). This Court has set forth the standard for harmless error review of agency decisions:

> To establish that there has been a reversible error, the burden is on the appellant in all cases to show prejudice as well as error. If errors are of such a character, and so interwoven with the case, as to lead a fair and impartial mind, trained and experienced in judicial investigation, upon an examination of the whole case and all the rulings involved therein, to the conclusion that there is a reasonable probability that such errors may have affected the determination of the case, they are prejudicial and reversible.

Concerned Citizens of Great Falls, Md. v. Constellation-Potomac, L.L.C., 122 Md. App. 700, 755 (1998) (cleaned up).

The failure to provide a hearing in this case was prejudicial and reversible error. The Board noted that the wage and employment records of WCI showed that Mr. Baylor did not work from May 14, 2019, through July 10, 2019, and from January 22, 2020, through April 30, 2020. At a hearing, Mr. Baylor would have had the opportunity to explain how his injury "incapacitated [him] or materially reduced [his] earning power in [the] type of work" that he was performing at the time of his injury. CS § 10-304.[9] Thus, the error in failing to hold a hearing was not harmless. In addition, without the required hearing, we cannot hold that substantial evidence supports the Board's conclusions under these circumstances. On remand, Mr. Baylor shall have his rightful opportunity to testify and cross-examine witnesses at a hearing under COMAR 12.05.01.04.

JUDGMENT OF THE CIRCUIT COURT FOR ALLEGANY COUNTY REVERSED. CASE REMANDED TO THE CIRCUIT COURT WITH INSTRUCTIONS TO VACATE THE DECISION OF THE

[9] The Board determined that Mr. Baylor's wage and employment history shows that he continued to work and earn similar wages after his injury. After he had been injured in the MCE furniture shop, Mr. Baylor worked for the Division in the dietary unit. At a hearing on remand, Mr. Baylor may present evidence as to the factors outlined in CS § 10-308(a), which provides as follows:

> (a) In determining what compensation, if any, to allow a claimant, the Board shall consider: (1) the good faith of the claimant; (2) the possibility that the alleged injury was self-inflicted or not accidental; (3) the extent and nature of the injury; (4) the degree of disability; (5) the period of disability or incapacity for other work; and (6) the ordinary earning power of the claimant.

SUNDRY CLAIMS BOARD AND TO REMAND THE CASE TO THE SUNDRY CLAIMS BOARD FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.