Circuit Court of Baltimore City
Case No. 24-C-21-002893

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2331

September Term, 2022

IN THE MATTER OF KARLA J. CHIMICK

Friedman,
Shaw,
Harrell, Glenn T.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw, J.

Filed: July 29, 2024

*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).

In 2018, Appellant Police Sergeant Karla J. Chimick filed an application for line-of-duty disability benefits with the Fire and Police Employees' Retirement System of the City of Baltimore. Appellant claimed she became disabled as a result of a car accident she was involved in while on duty. Following an administrative hearing in 2021, a hearing examiner awarded her non-line-of-duty-disability benefits. Appellant then filed a petition for judicial review in the Circuit Court for Baltimore City and a hearing was held. The court later issued a memorandum opinion and order, affirming the decision of the hearing examiner. Appellant noted this timely appeal, and she presents one question for this Court's review.

1. Did the Hearing Examiner of the Fire and Police Employee's Retirement System of the City of Baltimore Trustees err as a matter of law and fail to base her determination on substantial evidence in the record when she found that [Appellant] was not entitled to a Line of Duty Benefit?

BACKGROUND

On July 21, 2016, while on patrol in a Baltimore City Police Department vehicle, Appellant's car was struck on the right side. She was transported to the Public Safety Infirmary at Mercy Hospital complaining of "pain in her mid and lower back." Appellant underwent an MRI at Chesapeake Medical Imaging that showed she had a "central, right paracentral, right posterolateral L4-5 disc extrusion extending inferiorly from the disc level with central spinal canal stenosis and displacement of a swollen right L5 nerve root."

Following the accident, Appellant was treated by a neurologist and several orthopedic physicians, she has undergone MRI scans, physical therapy, IMEs, and she has been treated with lumbar injections, and occupational medicine. On May 22, 2017,

Appellant underwent lumbar decompression surgery that was performed by Dr. Haroun due to continued back and neck pain. After the surgery, Appellant reported improvement in her lumbar spine area. In September of 2017, however, Appellant complained that her back pain and spasms had returned. She continued to attend physical therapy through the end of the year.

On January 12, 2018, the Baltimore Police Department sent Appellant a letter that stated that she was deemed "to be 'permanently unable to perform the essential duties of a Baltimore City Police Officer relative to a medical condition" by the Mercy Public Safety Infirmary. The Department advised Appellant to either file "(1) File for Disability Pension Benefit or Service Retirement" or "(2) Resign employment with the Baltimore Police Department." Appellant filed for disability benefits in May, 2018.

At the request of the City, Appellant was sent for a second IME with Dr. Reiderman in June of 2018. Dr. Reiderman concluded that Appellant's "current diagnosis regarding the lumbar spine is that of a postsurgical state following right-sided lumbar decompression at L4-5 performed on May 22, 2017" and that the "overall prognosis is guarded due to her persistent symptoms following" the surgery. Dr. Reiderman found that "the current complaints as expressed by [Appellant] are causally related to the injury on July 21, 2016," and that Appellant "has reached the point of maximum medical improvement following the soft tissue injury sustained on July 21, 2016."

In January of 2019, Appellant underwent a second IME with Dr. Naff, as requested by the City. Dr. Naff concluded that "her medical treatment regarding her low back has

been reasonable[,] necessary and causally related to the accident[,]" and that he "would recommend a functional capacity evaluation to further define her capabilities." The results of the functional capacity exam ("FCE") revealed that Appellant did not meet the physical demand level of a police officer." The FCE report stated that the exam was "not considered an accurate representation of her current maximum levels. Rather a representation of her current willingness to tolerate activity."

Appellant underwent another IME on October 1, 2020, with a doctor chosen by the Department, Dr. Halikman. He reviewed Appellant's medical history dating back to 1998 and concluded that "[s]he had abundant pre-existing cervical and lumbar degenerative changes. . . . It would appear most likely the accident aggravated a pre-existing lumbar condition." In sum, Dr. Halikman concluded that Appellant was "permanently disabled from her job as a police officer."

As noted by Dr. Halikman, Appellant's back and spinal issues date back to 1998. In December 1998, an MRI was performed on her due to "sciatica-like symptoms radiating to the right leg [and] SI joint tenderness." The MRI revealed that Appellant had degenerative changes in the L4-5 spinal region. In 2004, Appellant reported that she injured her back while apprehending a suspect. In 2009, Appellant was involved in a car accident while "working for [the] City of Baltimore as a police officer." She complained of back pain as a result of the accident and was placed on modified duties and underwent physical therapy. An MRI from 2010 conducted to evaluate Appellant's "chronic pain" and "disc herniation," showed "small disc herniations in the L4-5 and L5S1 regions.

Appellant had a disability evaluation in 2011 with Dr. Mohammad Zamani who concluded that Appellant had:

> very minimal sign[s] of scoliosis [at] the shoulder and pelvic level and [that] mobility of the neck, back, [and] both upper and lower extremit[ies] [were] essentially normal. There is no other possible objective finding on physical examination and those MRI findings are age appropriate and they are not pathological. In summary, she has full and maximum medical improvement from [the] [September 26, 2009] accident and subsequent treatment. No further treatment needed. … Full improvement. According to AMA Guidelines Fourth Edition [she] has a 0% permanent impairment of head, neck, upper back, lower back, and right shoulder as a result of the [2009] accident.

In April of 2010, Appellant was diagnosed by Dr. Mirza Baig, an orthopedic specialist, with "[c]ervical spondylosis and disc herniation at C5-C6 with radiculopathy," and "[l]umbar spondylosis and disc herniations at L4-L5 and L50S1 with foraminal stenosis." She was advised to take pain medicine as needed.

In 2014, an IME was conducted by Dr. Sheldon Milner. Dr. Milner concluded that Appellant's "lumbar spine has twenty-five (25%) percent permanent partial impairment of the lumbar spine, representing a ten (10%) percent worsening since the previous evaluation [on] November 3, 2010." Appellant was advised to have physical therapy with cervical traction, complete home exercises and to take Aleve, as needed, for inflammation. By 2013, Appellant was still in physical therapy due to continued back and neck pain. In 2014, she underwent two IMEs. The doctor who completed the assessment from the IME in July of 2014 concluded that due to the accident on September 26, 2009, Appellant's "cervical spine ha[d] thirty-five (35%) permanent partial impairment, representing a ten (10%) worsening since the previous evaluation o[n] November 3, 2010." The assessment also

concluded that the "lumbar spine ha[d] twenty-five (25%) percent partial impairment, representing a ten (10%) percent worsening since the previous evaluation o[n] November 3, 2010. The doctor who completed Appellant's second IME in October of 2014 concluded that Appellant "[was] at maximum medical improvement for her cervical spine, as well as her lumbar spine," and that "[t]here ha[d] been no worsening to the patient's spine for the September 26, 2009, date of injury, thus, there is 0% worsening of her lumbar spine."

Appellant's claim for line-of-duty-disability benefits was scheduled for a hearing before an examiner on March 30, 2021. Following the hearing, which included testimony, the admission of medical records and arguments from counsel, the hearing examiner concluded that Appellant had failed to carry her burden of proof regarding a line-of-duty disability. The examiner found that "the disability [was] caused by the significant degenerative condition in her cervical and lumbar spine[,]" and thus, she qualified for a "non-line-of-duty disability." Appellant filed a petition for judicial review in the Circuit Court for Baltimore City and a hearing was held on January 22, 2022. The court later issued a memorandum opinion that affirmed the decision of the hearing examiner. This timely appeal followed.

STANDARD OF REVIEW

"The role of appellate courts in reviewing the decisions of administrative agencies is limited." *Long Green Valley Ass'n v. Prigel Family Creamery*, 206 Md. App. 264, 273-74 (2012). On appellate review of the decision of an administrative agency, the court reviews the agency decision, not the circuit court's decision. *Bd. Of Trs. Of the Fire &*

Police Emps.' Ret. Sys. v. Mitchell, 145 Md. App. 1, 8 (2002). The primary goal of the appellate court is to "determine whether the agency's decision is in accordance with the law or whether it is arbitrary, illegal, and capricious." *Long Green Valley Ass'n*, 206 Md. App. at 273-74. We will not disturb an administrative decision on appeal if "substantial evidence supports factual findings and no error of law exists." *Marsheck v. Bd. Of Trs. Of Fire & Police Emps.' Ret. Sys. Of City of Balt.*, 385 Md. 393, 402 (2002).

An appellate court's review of an "agency's factual findings entail only an appraisal and evaluation of the agency's fact finding and not an independent decision on the evidence. This examination seeks to find the substantiality of the evidence." *Catonsville Nursing Home, Inc. v. Loveman*, 349 Md. 560, 568-69 (1998). When the agency is presented with conflicting evidence, "it is the agency's province to resolve conflicting evidence' and to draw inferences from that evidence" and "a reviewing court 'must review the agency's decision in the light most favorable to it." *Bd. Of Physician Quality Assur. v. Banks*, 354 Md. 59, 68-69 (1999).

DISCUSSION

I. The hearing examiner did not err in concluding that Appellant is not entitled to line-of-duty disability benefits.

Appellant argues that the Hearing Examiner "violated this Court's derivative in *Hersl* by overstepping her authority, misinterpreting the opinions of the medical experts, and substituting her own judgment for the judgment of the medical experts, thereby failing to base [the] determination on substantial evidence in the record." Appellee counters that Appellant "failed to meet her burden to prove entitlement to a line-of-duty disability

pension" and argues that the hearing examiner correctly found that Appellant was entitled only to non-line-of duty disability benefits.

The Baltimore City Code, Art. 22 Sec 34 (e-1)(1)(i-ii) provides that:

(1) A member shall be retired on a line-of-duty disability retirement if:

> (i) a hearing examiner determines that the member is totally and permanently incapacitated for the further performance of the duties of his or her job classification in the employ of Baltimore City, as the result of an injury arising out of and in the course of the actual performance of duty, without willful negligence on his or her part;
>
> and
>
> (ii) for any employee who became a member on or after July 1, 1979, the application for line-of-duty disability benefits is filed within 5 years of the date of the member's injury.

The hearing examiner has broad discretion in evaluating medical opinions brought before him/her and in assessing the testimony provided by the Claimant and other witnesses. *Middleton*, 192 Md. App. at 362. A hearing examiner also has discretion to accept "any explanation for a disability which is supported by substantial evidence." *Fire and Police Employees' Retirement System of City of Baltimore v. Middleton,* 192 Md. App. 354, 362 (2010). In our review, an examiner's assessment of credibility will not be disturbed "unless that assessment is arbitrary, illegal, capricious or discriminatory." *Id.*

Appellant argues that the hearing examiner made an arbitrary decision when she found the opinions of Dr. Reiderman and Dr. Naff were not more credible than those rendered by Dr. Halikman and Dr. Haroun. She cites this Court's opinion in *Hersl v. Fire*

& Police Employees' Ret. Sys. to further her contention that the examiner ignored the medical experts and made an arbitrary and capricious decision.

In *Hersl*, the appellant was injured in the line-of-duty as a firefighter and did not return to work following the injury. He filed a claim for a line-of-duty disability retirement and his application was denied, following a hearing. The examiner concluded that the line-of-duty injuries the appellant had sustained "were not permanent and that the cause of his permanent total disability was a non-[line-of-duty] heart condition." *Hersl*, 188 Md. App. at 251. The appellant's treating physicians, however, reported that the injury sustained was a line-of-duty injury and was not caused by a pre-existing condition. There were no other medical opinions presented at the hearing. On review, this Court found that the examiner's conclusion was not supported by the evidence presented. *Hersl*, 188 Md. App at 269. We held that "[t]he substitution of a lay opinion for that of the medical expert was arbitrary." *Id.* at 264.

The case *sub judice* is factually distinct from *Hersl*. Appellant, here, asserts that "[t]he third to last sentence of the Hearing Examiner's decision[1] encapsulated everything that was improper about the decision because "no physician – treating, expert, or otherwise – determined that [Appellant] became disabled and was unable to work because of a pre-existing degenerative lumbar (or cervical) condition. . . ." (emphasis in original).

[1] "The [Hearing Examiner] finds the disability is caused by the significant degenerative condition in [Ms. Chimick's] cervical and lumbar spine."

Based on our review of the record, including the entirety of the examiner's opinion, we do not agree. The opinion summarized the medical evidence as follows:

> - **Dr. Reiderman** concluded that Appellant "sustained a soft tissue injury to the cervical and lumbar spine on July 21, 2016[,] and this **injury was *superimposed* upon pre-existing degenerative disease** of the cervical and lumbar spine. **He does *not* believe that the current complaints expressed by [Appellant] are causally related to the injury on July 21, 2016."**
> - **Dr. Naff**, who completed his evaluation of Appellant in 2019, concluded that Appellant's complaints and treatments after the 2017 surgery are **no longer related to the 2016 accident but rather, "chronic degenerative changes in her back."**
> - **Dr. Halikman**'s review of Appellant's entire medical records dating back to 1998 found that though there was evidence of significant degenerative, pre-existing lumbar findings "the accident . . . was a direct cause of the disc herniation" Appellant sustained.
> - **Dr. Haroun** concluded that "as a result of the injuries sustained on 7/21/2016," Appellant "is unable to perform her duties as a police officer. She will be permanently unable to do so in the future. Her injuries are a result of the accident on 7/21/2016 and are permanent.

As we see it, there was clearly evidence to support Appellant's position that her permanent disability was the result of the July 21, 2016, accident, but there was also evidence presented to support Appellee's position. Unlike *Hersl* where the hearing examiner's opinion about the cause of the complainant's permanent injury was *not* supported by any of the evidence presented, here, there was ample evidence presented supporting both sides. As stated in *Terranova*, "[a] reviewing court may, and should, examine any conclusion reached by an agency, to see whether reasoning minds could reasonably reach that conclusion from facts in the record before the agency, by direct proof, or by permissible inference. If the conclusion could be so reached, then it is based upon

substantial evidence, and the court has no power to reject that conclusion.". *See Terranova*, 81 Md. App. at 11-12.

This Court's opinion in *Fire & Police Employees. Ret. Sys. Of Baltimore v. Middleton*, 192 Md. App. 354, 356 (2010) provides guidance. In *Middleton*, the Fire and Police Employees' Retirement System of the City of Baltimore, Md. (F&P) noted an appeal following the circuit court's decision to reverse a hearing examiner's determination, finding that Middleton was entitled to line-of-duty disability benefits. This Court held that "despite other medical evidence to the contrary," "the hearing examiner's conclusion [was] supported by substantial evidence in the form of [another doctor's] expert opinion, which constitutes evidence that the injuries sustained" by Middleton while in the line-of-duty were "congenital abnormalities caused the appellee's disability." *Id.* at 362, 364.

We dealt with a similar split in expert opinions in *Terranova v. Board of Trustees,* 81 Md. App. 1 (1989). In *Terranova,* we held that "the fact that the opinions of three doctors go one way and the opinion of a fourth doctor another does not make the report of that fourth insubstantial." *Id.* at 11–12. The contrarian opinion of the fourth doctor was especially substantial in *Terranova* because the credibility of the respective physicians played an important role in the panel's decision. *Id.*

Appellant cites the opinions of Dr. Halikman and Dr. Haroun as dispositive of her claim that the July 16, 2012, accident caused her permanent disability. We hold, however, that the hearing examiner was not required to rely solely on those opinions. The examiner had the discretion to assess the credibility of all reports and to give them the weight she

determined was due. We note further that the examiner found problematic certain omissions by Appellant in her communications with doctors regarding her prior medical history. The examiner's opinion stated:

> It is problematic that the MRI of 2010 showed a disc herniation of L3-4, L4-5 and L5-S1 and continuing complaints in 2013. This information was not revealed to Dr. Reiderman, nor Dr. Naff. Their opinions were tendered without information about the Claimant's prior injury. In fact, the Claimant advised doctors that her prior history was unremarkable. All clinical findings indicate the Claimant had a prior history of degeneration and all clinical testing indicated significant degenerative findings.

In sum, the examiner's opinion detailed her factual findings and summarized Appellant's testimony. The examiner then concluded that Appellant had "not proved by a preponderance of the evidence that her injury arose out of and in the course of the actual performance of duty, namely the motor vehicle accident of July 21, 2016." On the record before us, we conclude that the examiner's determination was supported by substantial evidence in the record, and it was not an error of law, nor was it arbitrary or capricious.

JUDGMENTS AFFIRMED; COSTS TO BE PAID BY APPELLANT.