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Recent Developments: Maldonado v. Am. Airlines: Expert Vocational Testimony Is Not per Se Required in Judicial Review Proceedings to Rebut the Presumption of Correctness of a Workers' Compensation Commission Award of "Other Cases" Industrial Loss

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RECENT DEVELOPMENT

MALDONADO V. AM. AIRLINES: EXPERT VOCATIONAL TESTIMONY IS NOT *PER SE* REQUIRED IN JUDICIAL REVIEW PROCEEDINGS TO REBUT THE PRESUMPTION OF CORRECTNESS OF A WORKERS' COMPENSATION COMMISSION AWARD OF "OTHER CASES" INDUSTRIAL LOSS.

By: Stephen Cornelius

The Court of Appeals of Maryland held that there is no *per se* requirement to present expert vocational testimony to rebut the presumption of correctness of a Workers' Compensation Commission award of "Other Cases" industrial loss. *Maldonado v. Am. Airlines*, 405 Md. 467, 952 A.2d 294 (2008). An exception exists, however, when the factors of industrial loss are so complicated that no jury could justifiably alter the Commission's decision without hearing expert testimony. *Id.* at 480, 952 A.2d at 302.

George Maldonado ("Maldonado") was a fleet service clerk employed by American Airlines ("American"). Maldonado suffered a tear in his back while loading luggage into an aircraft carrier. He filed for workers' compensation benefits, claiming that he could not return to work because he could only sit for a limited period of time before needing to lie down. The Workers' Compensation Commission ("the Commission") determined that Maldonado sustained permanent partial disability of 50% from physical and psychological injuries.

American sought judicial review in the Circuit Court for Anne Arundel County. At trial, Maldonado testified that, following his injury, he obtained a bachelor's degree in theology, performed light housework, could walk continuously for thirty to forty minutes, and could drive a car. Additionally, both parties presented expert medical testimony addressing the severity of Maldonado's injuries. The jury, without hearing expert vocational testimony, reduced Maldonado's overall impairment to 35%. Maldonado appealed, and the Court of Special Appeals of Maryland affirmed, holding that there is no *per se* requirement for expert vocational testimony in a judicial review proceeding to rebut the Commission's presumption of correctness.

Maldonado then petitioned for a writ of certiorari, which the Court of Appeals of Maryland granted.

To determine the necessity of expert vocational testimony in judicial review proceedings, the Court of Appeals of Maryland commenced its analysis with the explanation that a Commission's decision is presumed correct, and that the challenging party has the burden of proof. *Maldonado*, 405 Md. at 477, 952 A.2d at 301 (citing MD. CODE ANN., LAB. & EMPL. § 9-745(b) (West 2008)). The court explained that no particular type of evidence is required to overcome the presumption of correctness; the challenging party can overcome the presumption by introducing new evidence, by relying on the record before the Commission, by contesting the significance of evidence, and by arguing witness credibility. *Maldonado*, 405 Md. at 478, 952 A.2d at 301 (citing *Abell v. Albert F. Goetze, Inc.*, 245 Md. 433, 437, 226 A.2d 253, 256 (1967)). The court held that while vocational expert testimony is admissible, vocational analysis has never been elevated to a *sine qua non* for proving permanent disability. *Maldonado*, 405 Md. at 479-80, 952 A.2d at 302 (citing *Terumo Med. Corp. v. Greenway*, 171 Md. App. 617, 639, 911 A.2d 888, 900 (2006)).

The court analyzed "Other Cases" industrial loss as a category of permanent partial disability under section 9-627(k) of the Labor and Employment Article of the Maryland Code. *Maldonado*, 405 Md. at 475-77, 952 A.2d at 299-300. The court found that two factors must be addressed: (1) the nature of the physical disability, and (2) the age, experience, occupation, and training of the disabled employee at the time of the injury. *Id.* (citing MD. CODE ANN., LAB. & EMPL. § 9-627(k)(2) (West 2008)). Expert vocational testimony is not *per se* required in every case, except when these two factors "are so complicated that no jury in any case, regardless of the other evidence presented, would have sufficient evidence upon which to alter a Commission decision." *Maldonado*, 405 Md. at 480, 952 A.2d at 302.

Maldonado asserted that the facts surrounding his injury were too complex for a jury to assess the extent of his injury without the help of a vocational expert. *Id.* at 474, 952 A.2d at 299. The Court of Appeals of Maryland disagreed, concluding that Maldonado's testimony, coupled with the expert medical testimony, provided sufficient evidence as to each factor under section 9-627(k)(2) for the jury to alter the Commission's decision. *Maldonado*, 405 Md. at 482-83, 952 A.2d at 303-04.

The court found the first factor adequately addressed at trial. *Id.* at 482-83, 952 A.2d at 304. Medical experts addressed the severity of Maldonado's physical and psychological injuries, and Maldonado testified that after the injury, he earned a degree and performed everyday activities such as working around the house and driving a car. *Id.* While expert medical testimony is mandated to establish the nature of an injury in a complex case, the court emphasized that it was not necessary for every subjective injury claim. *Id.* at 479, 952 A.2d at 302 (citing *Jewel Tea Co. v. Blamble*, 227 Md. 1, 7, 174 A.2d 764, 767 (1961)).

The court also determined that the trial sufficiently addressed the second factor. *Maldonado*, 405 Md. at 482, 952 A.2d at 303. First, Maldonado testified to the length of his employment, the physical nature of his position as a fleet service clerk, and the fact that he was forty-three years old at the time of the accident. *Id.* The court found that this testimony effectively addressed the statutory components of the second factor. *Id.* at 482-83, 952 A.2d at 303-04. Second, the court explained that jurors are generally familiar with matters involving work, age, experience, training, and job prospects. *Id.* at 481, 952 A.2d at 303. Consequently, the court concluded that the jury could determine, without a vocational expert, the extent of Maldonado's injury and how it affected his ability to work. *Id.* at 483, 952 A.2d at 304.

Despite the court's statutory analysis, Maldonado, relying on case law, argued that industrial loss determinations were inherently complicated, necessitating expert vocational testimony. *Id.* at 479, 952 A.2d at 301. In dismissing this argument, the Court of Appeals of Maryland noted that the case Maldonado relied on "explicitly stated that [it was] *not* establishing a *per se* requirement for expert testimony when a medical question was involved." *Id.* at 479, 952 A.2d at 302 (citing *Jewel Tea*, 227 Md. at 7, 174 A.2d at 767). Further, *Jewel Tea* required expert testimony because the challenging employee's lay testimony directly conflicted with all expert medical testimony, including his own expert's testimony. *Maldonado*, 405 Md. at 479, 952 A.2d at 301 (citing *Jewel Tea*, 227 Md. at 7, 174 A.2d at 767).

The court noted that several other states have also held that expert vocational testimony is not a *sine qua non* for determining industrial loss. *Maldonado*, 405 Md. at 481, 952 A.2d at 303. The court pointed out that, of the jurisdictions that purport to require expert vocational testimony, none of them apply a *per se* rule across the board. *Id.* at 481-82, 952 A.2d at 303.

The Court of Appeals of Maryland eliminated any uncertainty pertaining to a requirement of expert vocational testimony in judicial review proceedings for workers' compensation claims. The challenging party may produce any type of evidence so long as they satisfy the burden of proof. This approach promotes judicial economy because it conserves time in situations where a lay person can easily discern the extent of an injury and how it affects wage earning capacity. By holding that expert vocational testimony is not *per se* required to rebut the presumption of correctness of a Commission's award of permanent partial disability, the court empowers challenging parties with discretion in satisfying the burden of proof in judicial review proceedings.