

CATHERINE SALTZ  
(Appellant)

v.

M.W. SEWALL & CO.  
(Appellee)

and

MMTA WORKERS' COMPENSATION TRUST  
(Insurer)

Argued: May 21, 2014  
Decided: December 19, 2014

PANEL MEMBERS: Hearing Officers Pelletier, Greene, and Knopf  
BY: Hearing Officer Greene

[¶1] Catherine Saltz appeals from a decision of a Worker's Compensation Board Hearing Officer (*Collier*, HO) awarding her the protection of the Act and a closed-end period of incapacity benefits for a work-related mental stress injury. *See* 39-A M.R.S.A. § 201(3) (Supp. 2013). Ms. Saltz contends that the hearing officer erred in rejecting the opinion of the independent medical examiner (IME) regarding the duration of her incapacity. *See* 39-A M.R.S.A. § 312 (Supp. 2013). We affirm the hearing officer's decision.

## I. BACKGROUND

[¶2] Ms. Saltz, a CPA, worked as the Chief Financial Officer for M.W. Sewall beginning in September 2004. After the death of Board Chair Edward

Sewall, Jr., the company was reorganized into three divisions, each operated by one of Sewall's sons. In 2009, the company filed for bankruptcy. Ms. Saltz felt caught in the middle of conflicts between the sons and other actors within the company, including the bankruptcy trustee.

[¶3] In November 2009, Ms. Saltz was named as a defendant in a lawsuit filed by M.W. Sewall's creditors, alleging improper actions. In December 2009 she received a letter from the Maine Attorney General's office informing her that it was investigating the possibility of criminal action against her for the company's failure to pay sales and gasoline taxes. On December 7, she began treatment with Dr. Lake, her primary care provider, for anxiety, and was taken out of work for psychological stress. Shortly thereafter, the bankruptcy trustee notified Ms. Saltz that she was being terminated due to work performance issues.

[¶4] Ms. Saltz continued treatment with her primary care provider for mental stress, and also began seeing a counselor. Her condition improved, and Dr. Lake released her to regular duty as of February 5, 2010. In April 2010, the criminal prosecution was dropped, and in November 2010 she learned she would not be held financially liable.

[¶5] Ms. Saltz returned to work in February 2010, but that first job lasted only eight weeks. She took several temporary employment assignments, and collected unemployment during part of this time. In July 2011, she began working

as finance director for a Maine town, and then moved to a similar position with another town.

[¶6] Ms. Saltz filed her Petition for Award. Dr. David LoboZZo, a psychiatrist, performed an independent medical examination pursuant to 39-A M.R.S.A. § 312 (Supp. 2013). Section 312(7) requires the hearing officer to “adopt the medical findings of the independent medical examiner unless there is clear and convincing evidence to the contrary in the record that does not support the medical findings.”

[¶7] Dr. LoboZZo assessed Ms. Saltz to have suffered “A Major Depressive Disorder, Single Episode, In Remission,” caused by “the threat of a criminal lawsuit” in connection with her work for M.W. Sewall. In response to a question asking whether Ms. Saltz continues to suffer the effects of the mental injury, Dr. LoboZZo stated as follows:

Although she has not returned to baseline, she has substantially improved to the point of her depression being in remission at this point. It is quite difficult to put a date on when the effects of the mental injury ended, but to pick an arbitrary date, I would use the date that she became employed by [a Maine town] in July 2011.

Dr. LoboZZo added that “it was inadvisable for her to work at the level of Chief Financial Officer . . . from the [date of injury] up until the date that the effects of the mental injury ended in July of 2011.”

[¶8] The hearing officer adopted Dr. Loboizzo’s medical findings, except as to the duration of Ms. Saltz’s mental stress injury. He granted the petition and awarded Ms. Saltz total incapacity benefits from December 7, 2009, through February 5, 2010. The hearing officer issued additional findings of fact, but did not alter the outcome. Ms. Saltz filed this appeal.

## II. DISCUSSION

[¶9] Ms. Saltz contends that the hearing officer erred when he did not adopt the IME’s finding that she remained incapacitated until July 2011, and that the reasons given by the hearing officer were insufficient to be considered “clear and convincing evidence” contradicting the IME’s finding concerning that date. *See* 39-A M.R.S.A. § 312 (7).

[¶10] When considering whether clear and convincing medical evidence contrary to the findings of the IME is present, we “determine whether the hearing officer could have been reasonably persuaded by the contrary medical evidence that it was highly probable that the record did not support the IME’s medical findings.” *Dubois v. Madison Paper Co.*, 2002 ME 1, ¶ 14, 795 A.2d 696; *see also Bean v. Charles A. Dean Mem’l Hosp.*, W.C.B. No. 13-6, ¶ 14 (App. Div. 2013). The hearing officer must “state in writing the reasons for not accepting the medical findings of the independent medical examiner.” 39-A M.R.S.A. § 312(7).

[¶11] Ms. Saltz asserts that the medical records do not establish that the effects of the mental stress injury were over at the time she was released to work, and that her tumultuous post-injury work history reflects her continued incapacity. We disagree.

[¶12] The persistence of symptoms from a work injury does not necessarily mean that the employee is disabled thereby or that the disability is affecting the employee's ability to earn. A treatment provider overseeing the care of an injured employee is generally in a very good position to assess the necessity of work restrictions; thus, that provider's contemporaneous imposition of limitations or restrictions, or the lack thereof, is entitled to substantial weight. *See, e.g., Poitras v. R.E. Glidden Body Shop, Inc.*, 430 A.2d 1113, 1120 (Me. 1981) (stating that the assessment of a treating physician with "specific and first hand knowledge of the worker's condition" that "a person with the worker's physical and educational limitations would experience great difficulty obtaining employment" was sufficient, as a matter of law, to satisfy the worker's initial burden of production as to work unavailability).

[¶13] The hearing officer stated in writing the specific reasons for rejecting the IME's opinion. He noted Dr. Loboizzo's own concession that "[i]t is quite difficult to put a date on when the effects of the mental injury ended," and that,

therefore, the date he picked was “arbitrary.” The hearing officer was entitled to give less weight to Dr. Loboizzo’s opinion because of this qualification.

[¶14] In addition, the hearing officer provided the following reasons for rejecting the IME’s finding as to duration:

- Ms. Saltz requested that Dr. Lake lift her work restrictions as of February 5, 2010.
- Ms. Saltz was given an unrestricted work release by Dr. Lake on February 5, 2010.
- No health care provider restricted her ability to work since then.
- Her counselor described her on April 5, 2010 as “strong and full of conviction now.”
- Ms. Saltz stopped seeing her counselor altogether after the next visit on May 13, 2010.
- She did not treat for depression after July of 2010, at which point she was no longer on antidepressant medication.

[¶15] Giving deference to the hearing officer’s findings as to credibility and “medical/factual issues,” *see Dubois*, 2002 ME 1, ¶16, 795 A.2d 696,<sup>1</sup> we conclude that the evidence the hearing officer relied on could reasonably have persuaded him that it was highly probable that the IME was incorrect in his

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<sup>1</sup> Ms. Saltz cites no authority, and our research disclosed none, for her contention that the deference afforded to a hearing officer’s factual findings is diminished by the passing of time between hearing and decision. A hearing officer’s factual findings are not subject to appeal. 39-A M.R.S.A. § 321-B(2) (Supp. 2013).

assessment of how long Ms. Saltz had suffered from an earning incapacity due to her work-related mental stress injury.

### III. CONCLUSION

The entry is:

The decision of the hearing officer is affirmed.

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Any party in interest may request an appeal to the Maine Law Court by filing a copy of this decision with the clerk of the Law Court within twenty days of receipt of this decision and by filing a petition seeking appellate review within twenty days thereafter. 39-A M.R.S.A. § 322 (Supp. 2013).

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