

DONNA W. LABBE
(Appellant)

v.

THE GOGGIN COMPANY
(Appellee)

and

CHARTER OAK FIRE INSURANCE CO.
(Insurer)

Argued: May 20, 2015
Decided: December 6, 2016

PANEL MEMBERS: Administrative Law Judges Pelletier, Jerome, and Stovall
BY: Administrative Law Judge Stovall

[¶1] Donna Labbe appeals from a decision of an administrative law judge (*Collier, ALJ*) granting the Goggin Company's Petition for Review, and allowing it to discontinue payment of incapacity benefits. Although the ALJ acknowledged that Ms. Labbe is entitled to the protection of the Workers' Compensation Act for her January 8, 2009, work-related head injury, he also determined that she no longer suffers earning incapacity as a result of that injury. Ms. Labbe contends that the ALJ erred by misconstruing the medical findings of Dr. Esponnette, which he adopted; and by concluding that her psychological condition did not result from the physical injury. We affirm the ALJ's decision.

II. BACKGROUND

[¶2] Ms. Labbe began working as a bookkeeper for the Goggin Company in 2006. She had a preexisting history of migraine headaches, anxiety, and depression, among other things. Ms. Labbe was injured on January 8, 2009, while on a work errand, when a piece of ice fell from above and hit her head. In the following days, she sought treatment at an emergency room twice, where she underwent two negative CT scans. She also continued treatment with her neurologist, and sought treatment from a second neurologist and a neuropsychologist for persistent headaches, light sensitivity, difficulty concentrating, and other cognitive symptoms. She stopped working at the Goggin Company on February 9, 2009.

[¶3] The Goggin Company voluntarily paid Ms. Labbe incapacity benefits. However, it filed a Petition for Review in 2011, contending that she either did not sustain a concussion from the falling ice, or that she no longer suffered the effects of any injury that she did sustain.

[¶4] The ALJ reviewed conflicting medical evidence, and found Dr. Esponnette's reports most persuasive. Dr. Esponnette examined Ms. Labbe twice pursuant to 39-A M.R.S.A. § 207 (Supp. 2015). Based on those reports, the ALJ found that Ms. Labbe suffered a concussion and post-concussive syndrome (PCS) as a result of a mild traumatic brain injury on January 8, 2009, and that she is

entitled to a period of incapacity benefits as a result. He further found that (1) the PCS has resolved; (2) any ongoing psychological symptoms that Ms. Labbe is experiencing are not the result of the 2009 head injury; and (3) she is no longer subject to any work restrictions as a result of that injury. The ALJ concluded that Ms. Labbe is not entitled to ongoing incapacity benefits, and granted Goggin's Petition for Review.

[¶5] Ms. Labbe filed a motion for additional findings of fact and conclusions of law, which the ALJ denied. This appeal followed.

II. DISCUSSION

[¶6] Ms. Labbe contends that the ALJ erred by misconstruing Dr. Esponnette's medical findings, and by wrongly presuming that the psychological sequelae of a physical injury end when the physical injury has healed.

[¶7] Dr. Esponnette's report states:

On a more likely than not basis, Ms. Labbe did experience post concussion syndrome due to the impact on her head. On review of the evaluation of 01/22/2009, I continue to believe that at that time she was experiencing symptoms directly referable to that event. However, over time, it appears that somatization disorder has taken over.

.....

On a more likely than not basis, Ms. Labbe did have a concussion and did have post concussion syndrome for a period of time. As a general estimate, she likely had significant symptoms directly referable to the PCS somewhere between 12 months and 18 months following the incident of 01/08/2009. However, over time, on a very gradual basis, it is likely that conversion disorder has taken over.

.....

In terms of physiologic issues, there is no clear indication of the need for restrictions at this time.

[¶8] Based on these statements and other medical evidence, the ALJ found:

Essentially, [Dr. Esponnette] concluded that Ms. Labbe most likely did have incapacitating symptoms for a period of time as a result of the incident but that the physiological effects of the injury gradually dissipated and that Ms. Labbe's symptoms are no longer the direct result of her head injury. While not doubting her sincerity, he stated that she was no longer subject to any work restrictions resulting from her 2009 work injury. This is generally consistent with the conclusions of Dr. Kolkin, and is also supported by testimony from Drs. Boothby and Slotnick. While there are some medical opinions to the contrary, including that of Dr. Weaver, I find them less persuasive. Ms. Labbe's conversion disorder does not result from any organic effects of the January 8, 2009 mild traumatic brain injury, and she is no longer subject to any work restrictions as a result of the work injury. Any resulting incapacity is not compensable.

[¶9] Ms. Labbe contends that the ALJ erred by construing Dr. Esponnette's report to establish that her conversion disorder was not caused by the work injury. She asserts that Dr. Esponnette's report must be understood to mean that the physical effects of the injury are over but she continues to suffer psychological effects—a conversion disorder—as a result of the injury. We disagree.

[¶10] Dr. Esponnette wrote in his report: "On review of the evaluation of 01/22/2009, I continue to believe that at that time she was experiencing symptoms directly referable to that event. However, over time, it appears that somatization disorder has taken over." Dr. Esponnette's use of the word "however" supports the ALJ's findings. "However" is defined in MERRIAM-WEBSTER'S COLLEGIATE

DICTIONARY (11th ed. 2003) in part as follows: “... in spite of that: on the other hand”; and by the OXFORD AMERICAN DICTIONARY & THESAURUS (3d ed. 2010) as an adverb “used to begin a statement that contrasts with something that has just been said.” The ALJ’s finding that the conversion disorder is not referable to the physical injury is thus a reasonable interpretation of Dr. Esponnette’s report. The ALJ was not compelled to construe the report to mean that the work-related physical injury caused the conversion disorder. *See Oriol v. Portland Housing Auth.*, Me. W.C.B. No. 14-35, ¶ 12 (App. Div. 2014).

[¶11] The ALJ also based his conclusion on Dr. Kolkin’s medical findings. Dr. Kolkin stated in his report and his deposition that in his opinion, Ms. Labbe’s ongoing psychological symptoms were not a result of the head injury. To the extent there were contrary medical opinions in the record, the ALJ expressly found them to be unpersuasive.

III. CONCLUSION

[¶12] We conclude that the ALJ did not err by misconstruing Dr. Esponnette’s report or wrongly presuming, generally, that the psychological sequelae of a physical injury end when a physical injury has healed. The conclusion that the PCS did not result in the conversion disorder has support in the record. *See Pomerleau v. United Parcel Serv.*, 464 A.2d 206, 209 (Me. 1983) (quotation marks omitted). Moreover, the ALJ’s finding that Ms. Labbe no longer

has work restrictions due to the 2009 event has support in the record, and thus, the conclusion that she is not due ongoing wage loss benefits does not represent a misconception or misapplication of the law. *Id.*

The entry is:

The administrative law judge's decision is affirmed.

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. 2015).

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