

MARION LAWSON
(Appellant)

v.

TRANSWORLD SYSTEMS, INC.
(Appellee)

and

CHARTER OAK FIRE INS.
(Insurer)

Argued: February 7, 2019
Decided: December 4, 2020

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

[¶1] Marion Lawson appeals from a decision of a Workers' Compensation Board administrative law judge (*Elwin, ALJ*) granting in part her Petitions for Award and for Payment of Medical and Related Services for a July 22, 2015, gradual injury. The ALJ awarded the protection of the Act and payment of medical expenses for claims related to Ms. Lawson's right elbow and wrist, but denied all claims related to her neck and left upper extremity. Ms. Lawson challenges three rulings made by the ALJ separately as abuses of discretion, and together, as a violation of her right to due process. Ms. Lawson also contends the ALJ erred when adopting the independent medical examiner's (IME's) finding that her cervical and left arm condition was not work-related. *See* 39-A M.R.S.A. § 312 (Pamph. 2020). We affirm the decision.

I. BACKGROUND

[¶2] Marion Lawson began working for Transworld Systems on a full-time basis in April of 2015. Transworld receives referrals from the Department of Revenue for the collection of tax debts that are owed to the State of Maine. Ms. Lawson worked as a collector, making phone calls to collect tax debts. Ms. Lawson wore a headset and used her keyboard and mouse to access information and enter data. She used her mouse with her right hand and wrote with her left hand. There were various written materials kept on both sides of her L-shaped desk that she utilized in her work. Ms. Lawson handled approximately 50 calls per day.

[¶3] Ms. Lawson began having problems with her right elbow and right wrist in July of 2015. The IME concluded and there is no dispute that Ms. Lawson's repetitive work for Transworld resulted in a significant aggravation of preexisting right elbow and wrist conditions.

[¶4] Ms. Lawson began to experience pain and stiffness in her neck in late August 2015. On October 3, 2015, she suffered radiating pain down her left arm and sought treatment in the hospital emergency room. She underwent a cervical decompression and discectomy on October 26, 2015. Continuing left arm and cervical problems resulted in a second surgery, including a fusion, on October 24, 2016.

[¶5] Ms. Lawson was out of work for periods related to her surgeries but returned to her regular job with Transworld on March 8, 2017. She filed Petitions for Award and for Payment of Medical and Related Services in July of 2017, seeking the protection of the Act for gradual injuries to her bilateral upper extremities and neck as of July 22, 2015, as well as lost time benefits and payment of medical expenses.

[¶6] Transworld had requested the appointment of an IME before the scheduled hearing but after the established deadline to make such a request. The ALJ granted this request over Ms. Lawson's objection. At the hearing on February 28, 2017, Ms. Lawson objected to Transworld's plan to call a witness whom Transworld had not identified prior to the hearing; however the witness did not testify due to time constraints. Ms. Lawson also objected to the admission of several photographs taken of herself at her workstation because those pictures had not been provided before the hearing. The ALJ overruled all three objections.

[¶7] The ALJ continued the hearing on March 27, 2017, during which Transworld's witness testified. Transworld had provided a brief description of the witness's testimony prior to the second hearing date. Before the record closed, Ms. Lawson underwent the independent medical examination, and took the IME's deposition. The IME's report and the deposition transcript were made part of the record.

[¶8] In a decree dated June 20, 2018, the ALJ granted Ms. Lawson the protection of the Act and awarded medical expenses for the right wrist and elbow claims, but denied all claims related to the neck and left arm.

[¶9] Ms. Lawson filed a Motion for Findings of Fact and Conclusions of Law, which the ALJ denied. Ms. Lawson appeals.

II. DISCUSSION

A. Rulings by the Administrative Law Judge

[¶10] Ms. Lawson contests the two evidentiary rulings and the ruling allowing the independent medical examination. She contends that, taken as a whole, those rulings rendered the proceedings fundamentally unfair and violated her constitutional right to due process of law.

[¶11] We review an ALJ's decisions regarding the conduct of proceedings to determine whether, in light of all the circumstances, the ALJ acted beyond the scope of allowable discretion. *Kuvaja v. Bethel Savings Bank*, 495 A.2d 804, 806 (Me. 1985) (applying abuse of discretion standard to a motion to dismiss for failure to timely file a brief); *Laursen v. Sapphire Mgmt.*, Me. W.C.B. No. 20-19, ¶ 12 (applying abuse of discretion standard to denial of a motion to depose an IME); *Matthews v. Shaw's Supermarkets*, Me. W.C.B. No. 15-25, ¶ 20 (App. Div. 2015) (applying abuse of discretion standard to ALJ's decision to reopen proceedings and to issue a new decision). We will vacate the ALJ's decision only if the proceedings

violated due process; that is, considering all the circumstances, the proceedings were fundamentally unfair. *Kuvaja*, 495 A.2d at 806-07.

[¶12] The first objection challenges the ALJ’s decision to grant a request for an independent medical examination after the established deadline. The scheduling order set October 11, 2016, as the final date for requesting an IME “absent good cause.” The ALJ found good cause because Ms. Lawson had a second surgery after the original deadline resulting in a new request for payment of significant medical services. Thus, as the ALJ found, the medical picture had changed significantly after the expiration of the original date set for requesting such an exam. Accordingly, the ALJ acted within her discretion in determining that there was good cause to allow the IME to go forward.¹

[¶13] Next, Ms. Lawson objected to the admission of photographs depicting her sitting at her workstation because they had not been provided to her before her hearing. We acknowledge that board rules required the exchange of exhibits prior to hearing, *see* Me. W.C.B. Rule, ch. 12, § 16(1)² (requiring the parties to mark and exchange proposed exhibits prior to the hearing), and depending on the

¹ Ms. Lawson contends on appeal that the scope of the independent medical examination should have been restricted to issues involving the second surgery and should not have allowed exploration of broader issues, such as compensability of the initial injury. This argument was not presented to the ALJ before the decision was issued in either the motion in which Ms. Lawson raised her objection, or her position paper. For that reason we will not address it. *See Morey v. Stratton*, 2000 ME 147, ¶¶ 8-10, 756 A.2d 496 (emphasizing the “importance of bringing the specific challenge to the attention of the trial court at a time when the court may consider and react to the challenge”).

² Rule ch. 12, § 16(1) has since been amended. *See* Me. W.C.B. Rule, ch. 12, § 12(1) (amended September 1, 2018).

circumstances, it may fall within an ALJ's discretion to exclude exhibits that have not been timely exchanged. *See, e.g. Myers v. Efficient Energy Solutions*, Me. W.C.B. No. 12-033855A (August 27, 2015) (excluding employer's exhibits for failure to exchange prior to hearing); *Haney v. Penobscot Bay Ice, Inc.*, Me. W.C.B. No. 08-001177 (June 26, 2009) (same).

[¶14] The ALJ overruled the objection on the grounds that Ms. Lawson was in the photos, knew about them, and had testified that they were an accurate depiction of her workstation after her first surgery. Although we find this reasoning problematic (knowing the photographs had been taken is not the same as knowing that they would be presented at hearing), admission of the photographs does not amount to reversible error. The evidence did not close after the first hearing. Thus, as the ALJ noted, Ms. Lawson had time to respond to the photos, and was able to testify regarding the alterations made to her workstation before and after the photos were taken. Moreover, the ALJ noted that the IME had reviewed this testimony, and was subject to questioning at deposition on issues related to the photographs. Given the time between hearings and the opportunities to respond, we find that the admission of the photographs was not fundamentally unfair.

[¶15] Similarly, the decision to allow Transworld's previously unidentified witness to testify does not constitute reversible error because the witness did not testify until the second hearing and Transworld had provided a summary of the

witness's testimony before that date. Thus, any unfairness was alleviated because Ms. Lawson had adequate time and opportunity to prepare.

[¶16] Finally, Ms. Lawson maintains that the ALJ's rulings taken as a whole amount to a "trial by ambush" and established a hearing process that was fundamentally unfair. We disagree. The scheduling of a second hearing in this matter adequately resolved issues of unfair surprise that were raised by Transworld's conduct at the first hearing. Moreover, Ms. Lawson was provided with adequate opportunity to depose the IME and thus had the opportunity to address any issues raised in his report. For these reasons, we are not persuaded that the conduct of proceedings in this matter was fundamentally unfair or amounted to a violation of due process.

B. Adoption of the Independent Medical Examiner's Findings

[¶17] Ms. Lawson contends that the ALJ was compelled to reject the IME's medical finding that her cervical herniation was not work-related based on clear and convincing contrary evidence in the record. We disagree.

[¶18] An ALJ must adopt an IME's medical findings unless there is clear and convincing contrary evidence in the record. 39-A M.R.S.A. §312(7). When considering whether contrary evidence permits a rejection of the IME's findings, we determine "whether the [ALJ] 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. When, as in this case, the ALJ adopts the IME’s medical findings, we will reverse only when those findings are not supported by competent evidence, or the record discloses no reasonable basis to support the decision. *Dillingham v. Great N. Paper*, Me. W.C.B. No. 15-17, ¶ 3 (App. Div. 2015); *see also Pomerleau v. United Parcel Serv.*, 464 A.2d 206, 209 (Me. 1983).

[¶19] The IME opined, based on his examination and the medical records, that Ms. Lawson did not sustain a work-related injury to her neck as of July 22, 2015. The IME noted that she did not experience radiating left side pain until October 3, 2015, when she awoke with severe pain—a new symptom—and sought treatment at the emergency room. All previous complaints associated with work for Transworld had been related to her right arm. Medical records as late as September 2015 indicate the absence of radiculopathy. He also noted preexisting neck pain that had flared without trauma in the past. Although there are contrary medical opinions in the record, the ALJ found them unpersuasive on the issue of whether Ms. Lawson’s cervical disc herniation was connected to her work.

[¶20] Because the IME’s medical findings have competent evidentiary support in the record, the ALJ did not err when adopting them.³

³ Ms. Lawson also contends that the ALJ erred when determining that she did not meet her burden of proof on the issue of causation of the neck and left arm condition. This is not, however, the basis on which the ALJ decided the causation issue. The ALJ acknowledged that Ms. Lawson presented evidence

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 (Pamph. 2020).

Pursuant to board Rule, chapter 12, § 19, all evidence and transcripts in this matter may be destroyed by the board 60 days after the expiration of the time for appeal set forth in 39-A M.R.S.A. § 322 unless (1) the board receives written notification that one or both parties wish to have their exhibits returned to them, or (2) a petition for appellate review is filed with the law court. Evidence and transcripts in cases that are appealed to the law court may be destroyed 60 days after the law court denies appellate review or issues an opinion.

Attorney for Appellant:
Michael J. Dunn, Esq.
Workers' Compensation Board
Worker Advocate Division
36 Mollison Way
Lewiston, ME 04240

Attorney for Appellee:
Nelson J. Larkins, Esq.
PRETI FLAHERTY
PO Box 9546
Portland, ME 04112

to support her claim but determined that the evidence did not contradict the IME's findings on a highly probable basis.