DONATO APON
(Appellant)

v.

ABF FREIGHT SYSTEM, INC.
(Appellee)

and

GALLAGHER BASSET SERVICES
(Insurer)

Argued: September 27, 2018
Decided: February 25, 2019

PANEL MEMBERS: Administrative Law Judges Hirtle, Goodnough, and Stovall
BY: Administrative Law Judge Goodnough

[¶1] Donato Apon appeals from a decision of a Workers' Compensation Board administrative law judge (*Collier, ALJ*) denying his Petition for Award for a mental stress injury that he alleges resulted from the bad faith termination of his employment. The ALJ determined, pursuant to 39-A M.R.S.A. § 201(3) (2001),[1] that Mr. Apon's termination was taken in good faith by ABF Freight. Mr. Apon contends that the ALJ erred by failing to issue additional findings of fact and conclusions of law regarding the allocation of the burden of proof on the good faith element of the statute, and that the finding of good faith is not supported by competent evidence. We affirm the ALJ's decision.

[1] Title 39-A M.R.S.A. § 201(3) was repealed and replaced in 2017. P.L. 2017, ch. 294, §§ 1-2 (codified at 39-A M.R.S.A. § 201(3-A) (Supp. 2018)). The relevant language was not affected.

## I. BACKGROUND

[¶2] Mr. Apon worked as an operations supervisor for the Portland branch of ABF Freight System, Inc., a national interstate trucking business. His job involved, among other responsibilities, managing truck drivers and ensuring compliance with federal trucking regulations.

[¶3] On February 16, 2016, Derek Bell, ABF's Portland branch manager, presented Mr. Apon with a form entitled "Leadership Responsibility Hours of Service & Meal Break Compliance," and asked him to review and sign it. Mr. Apon reviewed the form, but did not sign it. At that time, Mr. Apon was unaware that Mr. Bell had been instructed by upper management that all leadership within terminal operations were required to sign the form. Mr. Apon expressed to Mr. Bell that he was concerned that signing the form could violate federal regulations because his job title was not explicitly listed among those that were required to sign the form. Mr. Bell disagreed and again instructed Mr. Apon to sign the form. At some point, Mr. Bell told Mr. Apon that his signature was mandatory, and that his refusal to sign could imperil his employment. The disagreement continued throughout the day.

[¶4] Due to his persistent noncompliance, Mr. Bell told Mr. Apon to turn in his keys and leave the facility. Mr. Apon asked him to reconsider and allow him to sign the form. Mr. Bell refused, and Mr. Apon left believing that his job was in

jeopardy. However, he only understood that he had been terminated when, two weeks later, he received his final, pro-rated paycheck. There is no dispute that his being fired was the medical cause of Mr. Apon's subsequently diagnosed mental stress injury.

[¶5] The ALJ also found that Mr. Apon's job performance had been under scrutiny before he was fired. ABF had concerns regarding issues with his leadership, and his performance evaluations had deteriorated from 2012 through 2015.

[¶6] Mr. Apon brought his Petition for Award,[2] seeking compensation for the mental stress injury. The ALJ concluded that ABF, acting through Mr. Bell, had terminated Mr. Apon in good faith, and thus denied the Petition pursuant to 39-A M.R.S.A. § 201(3). In so concluding, the ALJ explained in a footnote that he had assumed without deciding that the burden to show good faith was on ABF, and that ABF had persuaded him of that fact. After the decree issued, Mr. Apon moved for additional findings of fact and conclusions of law. The ALJ granted the motion and amended the decision without altering the outcome. *See* 39-A M.R.S.A. § 318 (Supp. 2018). Mr. Apon now appeals.

[2] Mr. Apon also brought a Petition to Remedy Discrimination, *see* 39-A M.R.S.A. § 353 (Supp. 2018), which the ALJ denied. That decision has not been appealed.

## II. DISCUSSION

[¶7] The Appellate Division accords deference to ALJ decisions addressing whether an injury is compensable under the Act. *See Cox v. Coastal Prods. Co.*, 2001 ME 100, ¶ 12, 774 A.2d 347; *Moore v. Pratt & Whitney Aircraft*, 669 A.2d 156, 158 (Me. 1995). The panel's role on appeal is "limited to assuring that the [ALJ's] findings are supported by competent evidence, that [the] decision involved no misconception of applicable law and that the application of the law to the facts was neither arbitrary nor without rational foundation." *Moore*, 669 A.2d at 158 (quotation marks omitted). When a party requests and proposes findings of fact, as in this case, the panel reviews only the factual findings actually made and the legal standards actually applied by the ALJ. *Daley v. Spinnaker Indus., Inc.*, 2002 ME 134, ¶ 17, 803 A.2d 446.

[¶8] The applicable version of the statutory provision addressing mental stress injuries provides in relevant part:

> **Mental injury caused by mental stress.** Mental injury resulting from work-related stress does not arise out of in in the course of employment unless it is demonstrated by clear and convincing evidence that:
>
> A. The work stress was extraordinary and unusual in comparison to pressures and tensions experienced by the average employee; and
>
> B. The work stress, and not some other source of stress, was the predominant cause of the mental injury.
>
> . . . .

> A mental injury is not considered to arise out of and in the course of employment if it results from any disciplinary action, work evaluation, job transfer, layoff, termination or any similar action, taken in good faith by the employer.

39-A M.R.S.A. § 201(3). The parties do not dispute that Mr. Apon has satisfied the "extraordinary and unusual" and "predominant cause" elements of this provision. The dispute centers on the question of good faith.

A. Competent Evidence

[¶9] Mr. Apon contends that the ALJ's finding that ABF acted in good faith when terminating his employment is unsupported by competent evidence in the record. He asserts that the evidence shows that Mr. Bell had an irrational, personal, or otherwise non-job-related hostility towards him that motivated Mr. Bell to fire him. This theory, however, relies upon evidence that the ALJ rejected, including testimony from Mr. Bell's superior, which the ALJ found to be "equivocal" and unpersuasive.

[¶10] It is the within the province of the ALJ to determine the existence or non-existence of facts, and to resolve conflicts in the evidence. *Savage v. Georgia Pacific Corp.*, Me. W.C.B. No. 13-5, ¶ 7 (App. Div. 2013). Even if the testimony Mr. Apon relies on had not been equivocal, Mr. Bell's testimony alone is sufficient to reject the version of the facts advocated by Mr. Apon.

[¶11] Moreover, in concluding that the termination had been in good faith, the ALJ also considered that the form in question was established to be mandatory;

that Mr. Bell had communicated to Mr. Apon that failure to sign the form could imperil his employment; that progressive disciplinary policies were not applicable to Mr. Apon; that Mr. Bell articulated rational reasons for not changing his mind; and that Mr. Apon's job performance evaluations had been declining. Each of those facts is supported in the record by testimony or exhibits.

[¶12] Although some of the ALJ's findings may make it fair to characterize ABF's actions as "hasty and abrupt" and "poorly communicated," as the ALJ found, they do not render the ultimate finding of good faith erroneous. The factual findings are supported by competent evidence, and we do not disturb them.

B. Motion for Additional Findings of Fact and Conclusions of Law

[¶13] After concluding that Mr. Apon's termination had been taken in good faith, the ALJ explained in a footnote:

> The parties differ on which side bears the burden of proof on this element. I do not find that it is necessary to decide that issue, even assuming that the employer bears the burden, as I find that it has met that burden based on the evidence before the Board.

Mr. Apon argues that the ALJ was required by the section 318 motion to more explicitly state how he allocated the burden of proof on the statutory element of good faith, and issue additional findings and conclusions thereon. We disagree.

[¶14] When requested, an administrative law judge is under an affirmative duty pursuant to 39-A M.R.S.A. § 318 to make additional findings of fact and conclusions of law in order to create an adequate basis for appellate review. *See*

*Coty v. Town of Millinocket*, 444 A.2d 355, 357-58 (Me. 1982). Adequate findings must include those that allow a reviewing body effectively to determine the factual and legal basis of the decision; that is, whether the decision is supported by competent evidence or the ALJ misconstrued or misapplied the law. *See Chapel Road Assocs., L.L.C. v. Town of Wells*, 2001 ME 178, ¶ 10, 787 A.2d 137.

[¶15] The ALJ's original decree, together with the additional findings of fact and conclusions of law, leave no ambiguity regarding the law applied or the relevant facts found by the ALJ. *See Moore v. City of Portland*, 2004 ME 49, ¶ 19, 845 A.2d 1163; *Gallant v. Boise Cascade Paper Group*, 427 A.2d 976, 977 (Me. 1981). Thus, the final decree is sufficient for appellate review as required by section 318. The footnote amounts to an expression that, given the totality of the evidence in the record, the ALJ was persuaded that the termination was taken in good faith, and by implication that it was not taken in bad faith. It leaves no ambiguity about the factual or legal result regardless of how the burden was allocated. The ultimate determination is not undercut by the fact that it was grounded hypothetically or that it was written in a footnote. The ALJ did not err by stating the law in this manner.

## III. CONCLUSION

[¶16] The ALJ's findings of fact regarding whether ABF met its burden of proving a good faith termination are supported by competent evidence. His

treatment of the burden of proof on the issue of a good faith termination did not involve any misconception of the law, and the application of the law to the facts was neither arbitrary nor without a rational foundation.

The entry is:

The administrative law judge's decision 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. 2018).

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.

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