

OLENA ASLANIDI
(Appellant)

v.

INTERNATIONAL PAPER COMPANY
(Appellee)

and

OLD REPUBLIC INSURANCE COMPANY
(Insurer)

Conference held: February 8, 2023
Decided: March 27, 2023

PANEL MEMBERS: Administrative Law Judges Stovall, Elwin, and Knopf
BY: Administrative Law Judge Elwin

[¶1] Olena Aslanidi appeals from a decision of a Workers' Compensation Board administrative law judge (*Chabot, ALJ*) denying her Petition for Award. Ms. Aslanidi contends that the ALJ erred by (1) requiring expert medical evidence to establish that her mental stress injury was caused by the work incident despite the “obvious” causal connection; and (2) adopting the independent medical examiner’s opinion, *see* 39-A M.R.S.A. § 312. We affirm the decision.

I. BACKGROUND

[¶2] Olena Aslanidi began working for International Paper in October 2016 as an accounting specialist. Prior to the alleged date of injury, Ms. Aslanidi had been

diagnosed with both physical and mental illnesses. She was diagnosed with multiple sclerosis in July 2014, and in November 2014, Ms. Aslanidi was hospitalized due to a psychotic episode involving hallucinations.

[¶3] In April 2017, Ms. Aslanidi had a second psychiatric hospitalization following an incident at International Paper's worksite. Ms. Aslanidi told Tina Penney, her direct supervisor, that she believed she was being followed by people from work. Ms. Penney had Ms. Aslanidi call her husband, Konstantin Aslanidi, who picked her up from work and took her for medical treatment. During that hospitalization, she was diagnosed with bipolar affective disorder type 1. Ms. Aslanidi was out of work for a few weeks following this incident and was prescribed lithium.

[¶4] On January 8, 2018, Ms. Aslanidi was at work when she began exhibiting signs of confusion, including asking Ms. Penney how to run a report that she did as a daily part of her job. Because this behavior was similar to that which preceded the April 2017 incident, Ms. Penney was concerned and consulted with the head of human resources. She also contacted Ms. Aslanidi's husband. Mr. Aslanidi arrived at the worksite to take his wife home but was unsuccessful in attempting to persuade her to leave. After about 30 minutes, the police were called to remove her.

[¶5] When the police arrived, they spoke with Ms. Aslanidi near the offices. After some discussion, she was persuaded to leave through the employee entrance,

but immediately returned through the public entrance. After further unsuccessful discussions in the public lobby, the police agreed to allow Mr. Aslanidi to physically lift his wife and carry her to his vehicle. However, when he put Ms. Aslanidi down to open the car door, she walked off down a dead-end street towards the woods. Because it was cold outside (about 15 degrees), Mr. Aslanidi had been unable to persuade her to leave, and she was acting erratically, the police determined that she was a threat to herself and/or others and forcibly placed her in their police car.

[¶6] The police drove Ms. Aslanidi to St. Mary's Emergency Department. Mr. Aslanidi reported to medical personnel that his wife's lithium dose had recently been decreased, and her behavior had become increasingly manic and psychotic. Ms. Aslanidi was discharged on January 14, 2018, and was out of work after the incident for about two months. She returned to work briefly before going out of work indefinitely.

[¶7] Ms. Aslanidi filed a Petition for Award, seeking to establish that the police interaction at work on January 8, 2018, caused her mental stress injury and ongoing disability since leaving International Paper. The ALJ denied the Petition for Award after finding that the work stress Ms. Aslanidi experienced on January 8, 2018, did not cause her current psychological and/or neurological conditions. This appeal followed.

II. DISCUSSION

A. Standard of Review

[¶8] The Appellate Division’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 v. Pratt & Whitney Aircraft*, 669 A.2d 156, 158 (Me. 1995) (quotation marks omitted). Here, Ms. Aslanidi did not request further findings of fact and conclusions of law following the unfavorable decision. When a party does not request further findings, the Appellate Division will treat the ALJ “as having made whatever factual determination could, in accordance with correct legal concepts, support [its] ultimate decision, and we inquire whether on the evidence such factual determinations must be held clearly erroneous.” *Daley v. Spinnaker Indus.*, 2002 ME 134, ¶ 17, 803 A.2d 446 (citing *Gallant v. Boise Cascade Paper Group*, 427 A.2d 976, 977 (Me. 1981)).

B. Standard of Proof

[¶9] The ALJ correctly noted that, in order to establish a mental injury caused by mental stress, 39-A M.R.S.A. § (3-A)(A) requires a claimant to demonstrate by “clear and convincing evidence” that:

(1) the work stress was extraordinary and unusual in comparison to pressures and tensions experienced by the average employee; and

(2) the work stress, and not some other source of stress, was the predominant cause of the mental injury.

Furthermore, “[t]he amount of work stress must be measured by objective standards and actual events rather than any misperceptions by the employee;” *id.* An injury is excluded “if it results from any disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or similar action taken in good faith by the employer.” 39-A M.R.S.A. § 201(3-A)(B).

[¶10] Here, the ALJ did not need to address all the above issues, because he determined that Ms. Aslanidi’s work stress was not the predominant cause of her mental injury. We find no error in that determination.

C. Proof of Medical Causation

[¶11] Ms. Aslanidi asserts that medical causation in this case is so obvious that expert medical opinion is not necessary. We disagree.

[¶12] The ALJ correctly set forth the applicable law as follows:

Although medical opinion testimony is not always essential to establish causation ... there is a “basic necessity of establishing medical causation by expert testimony in all but the simple and routine cases.” *Brawn v. Bangor Tire Co.*, Me. W.C.C. 97, 101 (Me. App. Div. 1983) (quoting 3A Larson, Workers’ Compensation Law, §§ 79.61 at 15-291 (1983)). Except in cases where “causation is clear and obvious to a reasonable [person] who had no medical training[,]” an employee must rely on the opinion of a qualified medical expert to meet his or her burden of proof on the issue of medical causation. *Brawn*, Me. W.C.C. 97, 101.

See also Smith v. Maine Coast Healthcare, Me. W.C.B. No. 20-02, ¶ 10 (App. Div. 2020). The determination of causal connection is a question of fact. *Bruton v. City of Bath*, 432 A.2d 390, 392 (Me. 1981).

[¶13] The ALJ based his determination that it was not obvious that the police-related event at work was the predominant cause of Ms. Aslanidi's current condition (and that medical expert testimony to that effect was therefore required) on the following facts: Ms. Aslanidi had preexisting diagnoses of multiple sclerosis and bipolar disorder; she had experienced two prior psychiatric hospitalizations, one of which occurred only 8 months before the claimed work injury; and incidents of increased manic and psychotic behavior had increased after her lithium dose had been reduced by half 3 months earlier.

[¶14] It is apparent from this recitation of preexisting neurological and psychological conditions, including prior recent psychiatric symptoms and treatment, that the ALJ did not consider the assertion that her current condition was caused by the police-related event at work to be clear and obvious to a reasonable person with no medical training. The ALJ therefore properly required Ms. Aslanidi to establish medical causation through an expert medical opinion, and absent that opinion, properly relied on the opinion of the IME.

D. IME's Report

[¶15] The ALJ based his findings regarding causation of Ms. Aslanidi's psychological condition on the opinion of Dr. Barkin, the independent medical examiner (IME). The ALJ is required to adopt the medical findings of an IME "unless there is clear and convincing evidence to the contrary in the record." 39-A M.R.S.A. § 312(7). Clear and convincing evidence is evidence that demonstrates that it is highly probable that a disputed fact is contrary to that found by the examining doctor. *Dubois v. Madison Paper Co.*, 2002 ME 1, ¶ 14, 795 A.2d 696. The Appellate Division may reverse an ALJ's decision based on an IME's findings only if the decision is unsupported by competent evidence and the record discloses no rational basis to support the IME's medical findings. *See Pomerleau v. United Parcel Serv.*, 464 A.2d 206, 209 (Me. 1983); *Dillingham v. Great N. Paper*, Me. W.C.B. No. 15-7 ¶ 3 (App. Div. 2015).

[¶16] The ALJ accurately noted that "[t]here is no medical opinion which states that the work stress incurred on January 8, 2018, caused [Ms. Aslanidi's] current diagnoses or is the predominant cause of the mental injury." Ms. Aslanidi contends, however, the ALJ should have rejected the IME's medical findings for several reasons, including that: (1) Dr. Barkin's specialty of psychiatry was inappropriate for determining causation; (2) Dr. Barkin was biased because

International Paper or its insurer paid his bill; and (3) Ms. Aslanidi lacked an opportunity to cross-examine Dr. Barkin.

[¶17] Although the parties disagreed about whether neuropsychology or psychiatry would be the more appropriate specialty, the ALJ ruled that a psychiatrist should perform the independent medical examination, and this ruling was appropriately within the ALJ's discretion. Matters regarding the admission or exclusion of evidence and the conduct of hearings are reviewed for abuse of discretion. *See, e.g., Weiss v. Maine Soapstone Co., Inc.*, Me. W.C.B. No. 19-4, ¶ 6 (App. Div. 2019) (determining that the ALJ acted within the bounds of their discretion when making a decision regarding the admission of evidence). Ms. Aslanidi has not demonstrated that the ALJ's determination that psychiatry rather than neuropsychology was the appropriate specialty for the IME fell outside the bounds of the ALJ's discretion.

[¶18] Our review of the record indicates that Ms. Aslanidi failed to preserve the remaining issues for appellate review. An issue is preserved for appellate review if there is a sufficient basis in the record to alert the ALJ and the opposing party to the existence of that issue at a point where that issue can be addressed. *Verizon New England, Inc., v. Pub. Utils. Comm'n*, 2005 ME 16, ¶ 15, 866 A.2d 844.

[¶19] During the hearing process, the IME's report was admitted into evidence without objection. Ms. Aslanidi did not seek to depose Dr. Barkin to cross-

examine him about the findings in his report, or about any potential bias. Thus, the ALJ was not alerted to the existence of these issues and was not given the opportunity to address them at the hearing stage. Because Ms. Aslanidi raises these arguments for the first time on appeal, they have not been preserved for appellate review, and are waived. *Severy v. S.D. Warren Co.*, 402 A.2d 53, 56 (Me. 1979) (“Whether in the criminal or civil sphere, we have long adhered to the practice of declining to entertain arguments not presented to the original tribunal.”); *Henderson v. Town of Winslow*, Me. W.C.B. No. 17-46, ¶ 10 (App. Div. 2017) (explaining the importance of raising a legal argument at a time and manner sufficient to give the ALJ and opposing party a fair opportunity to respond and address it).

[¶20] Even if these issues had been preserved, there is no evidence that psychiatry was an inappropriate specialty, or that Dr. Barkin was biased. International Paper’s payment of Dr. Barkin’s bill was required by Me. W.C.B. Rule, ch. 4, § 4, which allows for payment in excess of the maximum rate if approved by the Executive Director’s designee and requires payment by the Employer/Insurer in all cases.

III. CONCLUSION

[¶21] We conclude that the ALJ applied the proper legal standard for proving medical causation and appropriately relied on Dr. Barkin’s opinion in finding that

the incident at work on January 8, 2018, did not cause Ms. Aslanidi to suffer a mental stress injury pursuant to 39-A M.R.S.A. §201(3).

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

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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