

SANDRA A. HARVEY
(Appellee)

v.

AFFILIATED LABORATORY, INC.
(Appellant)

and

CROSS INSURANCE TPA, INC.
(Insurer)

Conference held: April 25, 2024
Decided: July 10, 2024

PANEL MEMBERS: Administrative Law Judge Chabot, Rooks, and Stovall
BY: Administrative Law Judge Rooks

[¶1] Affiliated Laboratory, Inc., appeals from a decision of a Workers' Compensation Board hearing officer (*Hirtle, ALJ*) granting Sandra Harvey's Petition for Award¹ related to a respiratory condition incurred at work on July 7, 2015. In granting the Petition, the ALJ rejected in part the medical findings of the independent medical examiner (IME) appointed pursuant to 39-A M.R.S.A. § 312(7)². Affiliated Laboratory contends there is insufficient evidence in the

¹ Ms. Harvey also filed a Petition for Payment of Medical and Related Services, which was dismissed without prejudice.

² Title 39-A M.R.S.A. §312(7) provides:

The board shall 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. Contrary evidence does not include medical evidence not considered by the independent medical examiner. The board shall state in writing the reasons for not accepting the medical findings of the independent medical examiner.

record to contradict the IME's opinion on a clear and convincing basis. We affirm the decision.

I. BACKGROUND

[¶2] On July 7, 2015, Sandra Harvey was exposed to an airborne chemical while working as a medical technician for Affiliated Laboratory. She experienced respiratory distress and was hospitalized for several days. Ms. Harvey was diagnosed with respiratory airway dysfunction syndrome (RADS), chemical pneumonitis, and chemical sensitivity.

[¶3] Subsequent proceedings resulted in a consent decree, approved by the board, which awarded Ms. Harvey the protection of the Act for RADS resulting from the July 2015 exposure. The consent decree reserved the issue whether a preexisting condition, tracheobronchial malacia (TBM), had been aggravated by the workplace exposure and was compensable under 39-A M.R.S.A. § 201(4). Affiliated Laboratory agreed to pay periods of total and partial incapacity benefits from the date of injury until September 7, 2019.

[¶4] Ms. Harvey returned to work in an office position, but experienced respiratory distress again on August 11, 2019, due to exposure to vehicle exhaust, welding fumes, and fuel vapors. She has not returned to work since that date and her lung functioning remains limited.

[¶5] Ms. Harvey filed a Petition for Award, seeking ongoing total incapacity benefits from September 7, 2019. At issue was whether Ms. Harvey continued to experience the effects of her established work injury and whether the combined effects of the work injury and preexisting TBM are compensable under 39-A M.R.S.A. § 201(4).

[¶6] Ms. Harvey was seen by Dr. Renato Medrano in January 2023, who performed an independent medical examination pursuant to 39-A M.R.S.A. § 312(7). Section 312(7) requires an ALJ to adopt the medical findings of an IME unless there is clear and convincing evidence to the contrary in the record. Dr. Medrano opined that Ms. Harvey's preexisting TBM was significantly aggravated by the July 2015 chemical exposure at work, but the aggravation ended on her last day of work, August 12, 2019. Dr. Medrano also stated that the diagnosis of RADS no longer applies due to a negative methacholine challenge test. Dr. Medrano further found that Ms. Harvey remains restricted from exposure to chemical irritants due to her work injury.

[¶7] The ALJ identified clear and convincing medical evidence contrary to some of Dr. Medrano's findings, and found the July 7, 2015, work injury resulted in RADS with a lasting chemical sensitivity characterized by coughing and shortness of breath when exposed to even low levels of irritants. The ALJ further found that the work injury aggravated, accelerated, or combined with her

preexisting TBM and the employment contributed to the resulting disability in significant manner on an ongoing basis. The ALJ adopted Dr. Medrano's finding that Ms. Harvey had no work capacity and awarded Ms. Harvey total incapacity benefits from September 7, 2019, and continuing. Affiliated Laboratory filed a Motion for Findings of Fact and Conclusions of Law, which was denied. This appeal followed.

II. DISCUSSION

[¶8] Affiliated Laboratory contends the ALJ erred when rejecting Dr. Medrano's medical findings. We disagree.

[¶9] When determining whether there is clear and convincing evidence sufficient to contradict the IME's medical findings, the Appellate Division panel looks to whether the ALJ "could reasonably have been persuaded that the required factual finding was or was not proved to be highly probable." *Dubois v. Madison Paper Co.*, 2002 ME 1, ¶ 14, 795 A.2d 696 (quotation marks omitted). Giving due deference to the ALJ's findings on credibility and factual medical issues, the panel must 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 findings." *Id.*; see also *Bean v. Charles A. Dean Mem'l Hosp.*, Me. W.C.B. No. 13-6, ¶ 14 (App. Div. 2013). When an IME's opinion is rejected,

the ALJ must explain the reasons for that rejection in writing. 39-A M.R.S.A. § 312(7).

[¶10] The ALJ rejected Dr. Medrano’s findings that Ms. Harvey no longer experiences effects of the 2015 work injury and that she no longer carries the diagnosis of RADS. The ALJ based that rejection on the medical findings of Dr. Calvin Fuhrmann, who is board certified in internal and pulmonary medicine, and who had performed an independent medical examination in June of 2019;³ and Dr. David Christiani, director of the occupational and environmental medicine section of the pulmonary and critical care medicine division at Massachusetts General Hospital. Dr. Fuhrmann opined that Ms. Harvey had classic symptoms of RADS—significant respiratory distress following an exposure to an irritant and ongoing sensitivity to various respiratory irritants. Dr. Christiani stated that Ms. Harvey continues to experience chemical sensitivity. Both doctors were aware of the negative methacholine test noted by Dr. Medrano and nevertheless found that Ms. Harvey continues to experience the effects of the workplace respiratory injury.

[¶11] Further, the ALJ credited Dr. Christiani’s finding that Ms. Harvey’s preexisting TBM worsened with chemical exposure and resulted in symptoms upon even low-level exposures. The ALJ found Dr. Christiani’s opinion to be consistent with the portion of Dr. Thomas Van der Kloot’s deposition testimony in

³ Dr. Fuhrmann acted as IME before the consent decree was entered into and approved in 2019. Dr. Medrano was appointed as IME in 2023.

which he describes TBM symptoms as the collapse of the airway under forceful exhalation. The ALJ also adopted that portion of Dr. Medrano's opinion that Ms. Harvey remains restricted against exposure to irritants.

[¶12] Additionally, based on findings of Drs. Fuhrmann, Christiani, and Van der Kloot, the ALJ found that the effects of the aggravated TBM are ongoing, contrary to the IME's finding that the effects had ended in August 2019.

[¶13] As the fact finder, the hearing officer is the ultimate judge of the credibility of a claimant's factual assertions. *See, e.g., Dubois*, 2002 ME 1, ¶ 16, 795 A.2d 696; *Saltz v. M.W. Sewall & Co.*, Me. W.C.B. No. 14-34, ¶ 15 (App. Div. 2014). The reasons given by the ALJ demonstrate that he could have been reasonably persuaded by the contrary medical evidence that it was highly probable that the record did not support the IME's findings that were rejected by the ALJ. *See Dubois*, ¶ 14; *Bean*, No. 13-6, ¶ 20.

III. CONCLUSION

[¶14] The ALJ did not err in finding clear and convincing evidence contrary to the IME's findings.

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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