MARY LOW
(Appellee)

v.

NESTLE WATERS NORTH AMERICA, INC.
(Appellant)

and

SEDGWICK CLAIMS SERVICES
(Administrator)

Conference held: December 20, 2023
Decided: January 24, 2024

PANEL MEMBERS: Administrative Law Judges Hirtle, Chabot and Sands
BY: Administrative Law Judge Chabot

[¶1] Nestle Waters North America, Inc., appeals a decision of a Workers' Compensation Board administrative law judge (*Stovall, ALJ*) determining that the employee, Mary Low, was entitled to incapacity benefits due to a work-related aggravation of her preexisting bilateral carpal tunnel syndrome (CTS) and thoracic outlet syndrome (TOS) conditions. Nestle contends that all of Ms. Low's claims were barred by the doctrine of res judicata, and there has been no change of circumstances in her incapacity level since the July 21, 2014, decree. We disagree and affirm the decision.

I. BACKGROUND

[¶2] Mary Low sustained a work-related injury on May 11, 2009, when she tripped on a step and fell at work. The board issued a decree (*Collier, hearing*

officer),[1] dated November 22, 2011, determining Ms. Low sustained a significant aggravation of her underlying right shoulder, upper back, and neck myofascial pain condition, and awarded her protection of the Act and partial incapacity benefits for a work-related injury to her neck, upper back, right shoulder, and arm. The decree notes that Ms. Low had pain in her right hand and numbness in her fingers on and before May 27, 2009.[2]

[¶3] On July 21, 2014, the board issued a decree terminating Ms. Low's incapacity benefits. Hearing Officer Collier found that Ms. Low's work-related aggravation of her myofascial pain had resolved as of May 18, 2012, the date when she began treatment for fibromyalgia, and that her treatment from that date forward had been for the nonwork-related fibromyalgia.

[¶4] Most recently, Ms. Low filed a Petition for Award and Petition for Restoration to establish increased incapacity due to bilateral CTS and TOS related to the May 11, 2009, date of injury. The board (*Stovall, ALJ*) found, based on an independent medical examiner's (IME's) opinion, *see* 39-A M.R.S.A. § 312, that Ms. Low's medical circumstances had changed and, in addition to the previously established (but resolved) myofascial pain condition, the 2009 work injury caused

[1] Pursuant to P.L. 2015, ch. 297 (effective Oct. 15, 2015), Workers' Compensation Board hearing officers licensed to practice law are now designated as administrative law judges (ALJs). The 2011 and 2014 decisions were issued before this change.

[2] The record indicates that Ms. Low had a diagnosis of CTS as early as 2000.

a significant aggravation to Ms. Low's preexisting bilateral CTS and TOS. Ms. Low was awarded total incapacity benefits from September 17, 2016, (the date of Ms. Low's first carpal tunnel surgery) to March 17, 2017, (when she had substantially recovered from the surgery) and 70% partial incapacity benefits from March 18, 2017, ongoing. Nestle filed a motion for further findings of facts and conclusion of law pursuant to 39-A M.R.S. § 318. The ALJ denied this motion, and this appeal followed.

II. DISCUSSION

A. Standard of Review

[¶5] The role of the Appellate Division "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). The Appellate Division will not disturb a factual finding made by the ALJ absent a showing that it lacks competent evidence to support it. *Dunkin Donuts of Am., Inc. v. Watson*, 366 A.2d 1121, 1125 (Me. 1976).

B. Res Judicata

[¶6] "[V]alid and final decisions of the Workers' Compensation Board are subject to the general rules of res judicata and issue preclusion." *Grubb v. S.D.*

Warren Co., 2003 ME 139, ¶ 9, 837 A.2d 117. In certain cases, the doctrine of res judicata may bar "the relitigation of issues that were tried, or that may have been tried, between the same parties or their privies in an earlier suit on the same cause of action." *Blance v. Alley*, 1997 ME 125, ¶ 4, 697 A.2d 828 (quotation marks omitted).

[¶7] The Law Court, however, has held that in the workers' compensation context, an employee is not precluded from an award of benefits for one injury when there has been a prior adjudication regarding a different injury. *Wacome v. Paul Mushero Const. Co.*, 498 A.2d 593, 594 (Me. 1985) (holding a claimant who entered into an agreement for a foot injury is not barred by res judicata from later seeking compensation for a back injury arising from the same accident). Likewise, the Appellate Division has held that the doctrine of claim preclusion should not be applied to bar claims that might have been tried in prior litigation but were neither litigated by the parties nor decided in the prior litigation. *Oleson v. Int'l Paper*, Me. W.C.B. No. 14-29, ¶ 20 (App. Div. 2014).

[¶8] In this case, the ALJ specifically found that there had been no previous litigation or determination regarding work-related CTS or TOS, but that there had been for myofascial pain and fibromyalgia. Careful review of the previous decisions supports this finding—there was no claim for CTS or TOS litigated or decided in the

2011 or 2014 litigation. Accordingly, we find no error in the ALJ's determination that those conditions are not barred by res judicata.

C. Change of Circumstances

[¶9] The ALJ further found that res judicata did apply to Ms. Low's level of incapacity, and thus proof of changed circumstances was required to increase it.

[¶10] "It is well-established that in order to prevail on a petition to increase or decrease compensation in a workers' compensation case when a benefit level has been established by a previous decision, the petitioning party must first meet its burden to show a 'change of circumstances' since the prior determination, which may be met by either providing 'comparative medical evidence,' or by showing changed economic circumstances." *Grubb*, 2003 ME 139, ¶ 7; *see also, e.g., McIntyre v. Great N. Paper, Inc.*, 2000 ME 6, ¶¶ 5-6, 743 A.2d 744.

[¶11] Nestle argues that the ALJ erred by finding a change of circumstances because the ALJ did not rely on comparative medical evidence, but instead based his opinion on the combination of the section 312 report, Ms. Low's testimony that her condition had worsened, and evidence that she had undergone two carpal tunnel surgeries since the last decree. We find no error.

[¶12] The IME reviewed Ms. Lowe's medical history and noted that in 2014, her diagnosis was fibromyalgia, but currently, the overriding diagnosis is TOS. Moreover, the Law Court has affirmed a finding of changed circumstances based on

the medical opinion of an IME, along with evidence that the employee had surgery on the body part at issue and had experienced a worsening of symptoms since the last decision. *Bernier v. Data Gen. Corp.*, 2002 ME 2, ¶ 7, 787 A.2d 144 (stating that "we give deference to factual findings of [ALJs], particularly when those findings require an evaluation of medical evidence." (quotation marks omitted)). The ALJ's decision in this case is consistent with the holding in *Bernier*. Accordingly, we find no error.

III. CONCLUSION

[¶13] The ALJ's factual findings are supported by competent evidence, the decision involved no misconception of applicable law, and the application of the law to the facts was neither arbitrary nor without rational foundation.

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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