

TAMMIE L. (COOMBS) KILLAM
(Appellee)

v.

MAINEHEALTH
(Appellant)

and

SYNERNET
(Insurer)

Conference held: April 8, 2026
Decided: August 27, 2026

PANEL MEMBERS: Administrative Law Judges Stovall, Rooks, and Smith
By: Administrative Law Judge Smith

[¶1] MaineHealth/Maine Coast Memorial Hospital (the Hospital) appeals from a decision of a Workers' Compensation Board administrative law judge (*Hirtle, ALJ*) denying the Hospital's Petition for Review pertaining to Tammie Killam's July 2, 2014, work injury. The Hospital contends the ALJ erred by interpreting the independent medical examiner's (IME'S) opinion to contain an "unambiguous" assessment of no work capacity, and by adopting that interpretation. We disagree and affirm the decision.

I. BACKGROUND

[¶2] Tammie Killam was hired by the Hospital as a full-time orderly on October 21, 2013. On July 2, 2014, while moving a table in the operating room, she

felt and heard a pop on the ulnar side of her left wrist. As established in a consent decree dated March 7, 2018, Ms. Killam sustained a work-related left wrist injury on July 2, 2014, and resulting “psychological overlay consistent with an adjustment disorder with depression and anxiety.” The parties agreed she was entitled to receive total incapacity benefits without prejudice, pursuant to 39-A M.R.S.A. § 212.

[¶3] In 2020, the Hospital filed a Petition for Review and sought to reduce Ms. Killam’s level of benefits to reflect a full-time, minimum wage-earning capacity. Ms. Killam then filed a Petition for Payment of Medical and Related Services. The ALJ found in a decree dated August 11, 2022, that Ms. Killam had developed causally related symptoms and limitations in her right wrist and remained totally incapacitated to earn because of her work-related injury and its psychological sequelae. Finally, the ALJ found that Ms. Killam’s treatment with a psychologist was reasonable, proper, and causally related to her work-related injury. Ms. Killam has continued counseling and takes medication prescribed by a psychiatrist.

[¶4] On August 2, 2024, Ms. Killam saw Dr. Benjamin Branch for an independent medical examination pursuant to 39-A M.R.S.A. § 312. In his report dated August 4, 2024, Dr. Branch opined that Ms. Killam had no work capacity. In an addendum issued a few days later, he stated that Ms. Killam could gradually return to work if she had proper pain management. The Hospital filed a second Petition for Review on September 10, 2024.

[¶5] After a testimonial hearing, the ALJ first found, based on EMG findings and Ms. Killam’s testimony, that there had been a change in her medical circumstances.¹ Thus, the ALJ proceeded to revisit Ms. Killam’s incapacity level. The ALJ then determined that Ms. Killam was entitled to continued total incapacity benefits, based on Dr. Branch’s medical findings regarding her lack of work capacity, and denied the Petition for Review.

[¶6] The Hospital filed a Motion for Further Findings of Facts and Conclusions of Law pursuant to 39-A M.R.S. § 318. The ALJ denied the motion, and the Hospital appeals.

II. DISCUSSION

A. Standard of Review

[¶7] 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).

¹ A party seeking a change in benefits from those awarded in a previous decree bears the burden of proving a change in circumstances since the previous decree. *Folsom v. New England Tel. & Tel. Co.*, 606 A.2d 1035, 1037 (Me. 1992). The determination that Ms. Killam’s medical circumstances have changed since the 2022 decree has not been challenged on appeal.

B. Work Capacity

[¶8] On an employer's petition for review, the employer bears the burden of proof to establish that the employee's earning capacity has increased since a prior decree. *Ibbitson v. Sheridan Corp.*, 422 A.2d 1005, 1009 (Me. 1980).² The Hospital contends that the ALJ erred when adopting an interpretation of the IME's medical findings as containing an unambiguous assessment that Ms. Killam continued to have no work capacity. We disagree with this contention.

[¶9] When Dr. Branch was initially asked whether Ms. Killam has any current work capacity, he responded:

No. Ms. [Killam] has no current work capacity. She has been out of work for 9 ½ years. She has persisting and uncontrolled pain. She did not report any restrictions although I suspect she will be significantly limited in activity secondary to presence of chronic pain and associated behaviors, orthopedic conditions involving the bilateral wrists that have been refractory to care.

[¶10] Dr. Branch later stated in his response to a supplemental question regarding work capacity:

Ms. [Killam] has not worked in any capacity in 9 ½ years. She indicated that she did not wish to return to work in the next 6 months nor in any capacity. She does not believe she can work. She reports

² If the employer shows that the employee regained partial work-capacity, the employee then bears a burden of production to show that work is unavailable to him or her as a result of the injury. *Ibbitson v. Sheridan Corp.*, 422 A.2d 1005, 1009 (Me. 1980). If the employee meets the burden of production, the employer's "never-shifting" burden of proof may require it to show that it is more probable than not that there is available work within the employee's physical ability. *Id.* at 1009-1010; *Poitras v. R. E. Glidden Body Shop*, 430 A.2d 1113, 1118 (Me. 1981). Because we affirm the ALJ's determination that the Hospital did not establish that Ms. Killam regained a work capacity, there is no call to assess whether these additional burdens were met.

ongoing pain in both wrists and hands, left worse than the right. She has limited left wrist range of motion. She has full, pain-free range of motion in her dominant right wrist and hand. . . . I am unaware of any restrictions that [her surgeon] may have given her – she reported that she had none. Based upon my exam and review, she should have restrictions of no lifting of exogenous weight in the left arm and no repetitive movements of the left wrist or hand. With proper pain management (to include treatment and reorientation of pain behaviors including anticipatory pain and activity avoidance) . . . , Ms. [Killam] should be able to work a position with work duties within the above restrictions but will require a gradual return to work. In other words, she should start with 4 hours and progress to a full 8-hour day over the course of a few weeks. With a gradual return, she should be able to work a full-time position.

[¶11] Because Dr. Branch served as an independent medical examiner, the ALJ was required to accept his medical findings absent clear and convincing evidence to the contrary. 39-A M.R.S.A § 312. When an ALJ is confronted with potentially ambiguous language in the independent medical examiner’s findings, however, “it is incumbent on the [ALJ] to consider the larger context in which those statements are offered to construe the intent of the examining physician.” *Oriol v. Portland Hous. Auth.*, Me. W.C.B. No. 14-35, ¶ 12 (App. Div. 2014). Ambiguity may exist in an IME’s report or testimony when it is “susceptible of more than one meaning.” *Thurlow v. Rite Aid of Me., Inc.*, Me. W.C.B. No. 16-23, ¶¶ 13, 14 (App. Div. 2016).

[¶12] The ALJ viewed Dr. Branch’s opinion regarding Ms. Killam’s work capacity as “(1) an initial unambiguous assessment of ‘no work capacity’; followed by (2) a conditional assessment that if Ms. Killam were to receive effective pain

management, she could attempt a gradual return to work, beginning part time.” The ALJ did not view Dr. Branch’s supplemental findings as creating ambiguity, but as stating plainly that Ms. Killam had no current work capacity. The ALJ viewed the restrictions Dr. Branch describes in the supplemental findings, combined with the “no work capacity” opinion, as recommendations for Ms. Killam to follow generally rather than an assessment of current work capacity. We find no error in this interpretation.

[¶13] To the extent that the IME’s findings are ambiguous, the ALJ properly considered the larger context in which the statements were made. The supplemental findings merely state that if a condition (effective pain management) were met, Ms. Killam could start a gradual return to work. The ALJ made a finding of fact that Ms. Killam had engaged in pain management treatment, but that treatment was not successful. This finding—that the condition contained in the IME’s findings for Ms. Killam to return to work had not been met—undermines the contention that the IME intended to state that Ms. Killam had a current work capacity. Thus, we perceive no error in the ALJ’s reading of the IME’s medical findings, and the adoption of those findings.

III. CONCLUSION

[¶14] The ALJ neither erred in interpreting the IME’s findings to mean that Ms. Killam has no current work capacity, nor in concluding that the Hospital did not

establish that Ms. Killam had regained a work capacity. The ALJ's factual findings are supported by competent evidence, and the ALJ neither misconceived nor misapplied the law.

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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