

JODY LYNN BEAN
(Appellant)

v.

CHARLES A. DEAN MEMORIAL HOSPITAL
(Appellee)

and

WILLIS OF NEW ENGLAND
(Insurer)

Decided: June 27, 2013
Conferenced: May 24, 2013

PANEL MEMBERS: Hearing Officers Jerome, Knopf, and Pelletier
BY: Hearing Officer Jerome

[¶1] Jody Lynn Bean appeals from a decision of a Worker's Compensation Board Hearing Officer (*Greene*, HO) denying her claim for wage loss benefits based on several claimed dates of injury. In so doing, the hearing officer rejected the medical findings of the independent medical examiner (IME) appointed pursuant to 39-A M.R.S.A. § 312 (Supp. 2012).¹ Ms. Bean contends that the evidence relied on by the hearing officer did not rise to the level of clear and convincing contrary evidence sufficient to contradict the IME's findings pursuant to 39-A M.R.S.A. § 312(7). We affirm the hearing officer's decision.

¹ Title 39-A M.R.S.A. § 312 has since been amended. P.L. 2013, ch. 63, § 9 (approved May 7, 2013).

I. BACKGROUND

[¶2] Jody Lynn Bean worked as a certified nursing assistant (CNA) at Charles A. Dean Memorial Hospital's Greenville nursing home facility. She suffered three work-related injuries to her neck and/or shoulder in August of 2004, June of 2008, and December of 2009.²

[¶3] Ms. Bean first injured her neck on August 22, 2004, when a patient grabbed her hair and would not let go. She lost no time from work on account of this injury, but was restricted to light duty work until October 1, 2004. Between February 2005 and June 2008, Ms. Bean sought no treatment for neck pain.

[¶4] On June 10, 2008, Ms. Bean struck her right shoulder on a first aid box that was protruding from a wall. She sought treatment at the emergency room where she reported pain and a crunching sensation in her neck. She was diagnosed with a cervical strain and was restricted from lifting for one week, but lost no time from work. During her evaluation, she reported that she had injured her neck in 2004, but also stated that she had not had any neck trouble since then.

[¶5] On July 6, 2009, Ms. Bean sought treatment for pain and stiffness in her neck, paresthesias in her arms and legs, and headache. There was no incident at

² The hearing officer concluded that Ms. Bean also suffered work injuries in June 2006 (chest) and May 2008 (chest and right arm). Neither injury implicated Ms. Bean's neck or shoulder. Both work injuries involved a visit to the emergency room, but did not require further treatment or cause her to lose time from work. Ms. Bean also alleged injuries to her neck and/or shoulder in July 2009 and October 2009, but the hearing officer determined that no work injury occurred on those dates and thus denied the petitions. Ms. Bean has not challenged these findings.

work that was identified as the source of these problems, although Ms. Bean reported to her treating physician that her neck pain originated with the 2004 work injury. Ms. Bean underwent an evaluation, including an MRI and EMG, which were interpreted as normal. She was placed on light duty work and prescribed physical therapy.

[¶6] Ms. Bean continued to treat for neck and right shoulder problems into the fall of 2009. She developed a swelling or bump on her right shoulder that was diagnosed as bursitis and right shoulder impingement syndrome. She was taken out of work on November 25, 2009, for approximately three weeks due to her neck and right shoulder problems.

[¶7] Ms. Bean returned to work on December 16, 2009. Two days later, she experienced increased neck and right shoulder pain after a patient pulled on her left arm during a transfer. Ms. Bean was taken out of work on account of that incident based upon her subjective complaints of pain until January 25, 2010. Ms. Bean remained at work thereafter, in a light duty medical technician post until September 22, 2010, when she was taken out of work again due to ongoing neck and shoulder pain. Ms. Bean had a brief return to work thereafter, but it was not successful. She has been out of work since November 23, 2010.

[¶8] Dr. Woelflein performed an evaluation pursuant to 39-A M.R.S.A. § 312 in October of 2010. She concluded that Ms. Bean's work activities more

likely than not caused her ongoing neck and shoulder pain. Although she acknowledged that, normally, the types of work injuries suffered by Ms. Bean would have only a temporary effect, she explained that “repetitive strains and re-injuries/aggravations can produce an additive effect particularly in myofascial strain injuries.” Dr. Woelflein recommended a gradual return to full-time work with restrictions on lifting and overhead work.

[¶9] Ms. Bean filed petitions for award and for payment of medical and related services. She sought incapacity benefits for two closed-end periods (from December 21, 2009, to January 25, 2010, and from September 22, 2010, to November 8, 2010), ongoing incapacity benefits from November 23, 2010, and payment of medical expenses related to all claimed dates of injury.

[¶10] The hearing officer determined that Ms. Bean suffered work-related injuries to her neck and/or shoulder on August 22, 2004, June 10, 2008, and December 18, 2009. However, the hearing officer rejected the IME’s conclusion that Ms. Bean’s disability was work-related. The hearing officer concluded instead that any symptoms caused by the work injuries had resolved after a short period, and that the ongoing pain she experienced was attributable to nonwork-related conditions. With respect to the December 18, 2009, injury, the hearing officer found that the incident aggravated a preexisting, nonwork-related, myofascial pain

condition, but did not significantly contribute to Ms. Bean's disability. *See* 39-A M.R.S.A. § 201(4) (Supp. 2012).

[¶11] Accordingly, the hearing officer awarded no incapacity benefits, and granted the petition for medical and related services only for service dates of May 8, 2008, June 12, 2008, and December 21, 2009. The hearing officer issued additional findings of fact and conclusions of law in which he confirmed the decision. Ms. Bean appeals.

II. DISCUSSION

[¶12] The hearing officer rejected the IME's medical findings on causation based on the conclusion that there was clear and convincing evidence to the contrary in the record, as required by 39-A M.R.S.A. §312(7). Ms. Bean claims that this was error and that the record evidence does not support such a conclusion.

[¶13] 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.

[¶14] When determining whether there is clear and convincing evidence contrary to the IME's findings, the Appellate Division panel looks to whether the hearing officer "could reasonably have been persuaded that the required factual

finding was or was not proved to be highly probable.” *Dubois v. Madison Paper Co.*, 2001 ME 1, ¶ 14, 795 A.2d 696 (quotation marks omitted); *see also Meade v. Southworth-Milton, Inc.*, Me. W.C.B. No. 13-2, ¶ 2 (App. Div. 2013). Accordingly, the panel must determine whether “the hearing officer could have been reasonably persuaded by the contrary medical evidence that it was highly probable that the record did not support the IME’s medical findings.” *Dubois*, 2001 ME 1, ¶ 14, 795 A.2d 696; *Meade*, Me. W.C.B. No. 13-2, ¶ 2.

[¶15] Ms. Bean argues that the record lacks sufficient evidence to support the hearing officer’s rejection of the IME’s medical findings. She points to medical records in addition to the IME’s report that attribute the cause of her ongoing problems to her work injuries, including several M-1 forms that have the “work-related” box checked off; a 2010 notation by her treating physician, Dr. Peck, that her neck pain “was the direct result of her work as a CNA”; and reports or records from other treating physicians, including Dr. Arabadjis and Dr. Vytopil, that refer to her condition as work-related.

[¶16] Ms. Bean further asserts that the only medical opinion that contradicts the IME’s medical findings comes from Dr. Kimball, who performed an evaluation on behalf of the employer pursuant to 39-A M.R.S.A. § 207 (Supp. 2012). According to Ms. Bean, Dr. Kimball’s report does not contradict the IME’s finding that her condition is work-related because he states that her complaints “are

multifactorial and most likely not limited to what she has described as work incidents.” We disagree with Ms. Bean’s contentions.

[¶17] When an IME’s opinion is rejected, the hearing officer must explain the reasons for that rejection in writing. 39-A M.R.S.A. § 312(7). The hearing officer in this case explained his reasons as follows in response to the motion for additional findings of fact and conclusions of law:

Although in the absence of any clear and convincing evidence to the contrary, the Board is required to adopt the medical findings of the independent medical examiner, Dr. Woelflein, it cannot do so when those medical findings are based upon factual assumptions not proven to be accurate and there is another medical opinion indicating a different etiology for the employee’s condition.

[¶18] The IME’s medical findings are based largely on the history that Ms. Bean reported—that she had experienced ongoing neck symptoms since 2004. The hearing officer specifically found this history to be unreliable and inconsistent with the credible record evidence, including the contemporaneous medical records. Based on evidence that the hearing officer did find credible, he concluded that there was no history of neck problems between the initial injury in 2004 and the 2008 work injury. The hearing officer further rejected the IME’s conclusion that the employee injured her neck in 2006, finding that it was the employee’s chest, not her neck, that was injured at that time. Finally, the hearing officer rejected the IME’s findings because her report did not describe the nature of the injuries in detail or how they were related to employment. The IME, for example, merely

stated that “the mechanism of the injury [was] consistent with [the employee’s] complaints,” which, again, he found unreliable.

[¶19] The hearing officer rejected the medical findings contained in the treating physicians’ reports showing work-relatedness because those findings were also largely based on the employee’s unreliable, subjective complaints, rather than on objective diagnostic information. The hearing officer instead relied upon Dr. Kimball’s opinion when finding that (1) the 2004, 2008, and 2009 work injuries are not the cause of Ms. Bean’s ongoing disability, and (2) more likely than not, the cause is chronic myofascial pain due to tension. With respect to the 2009 injury, although the hearing officer found that it aggravated the preexisting, myofascial pain condition, he also found that it did not contribute in any significant manner to Ms. Bean’s disability, pursuant to section 201(4).

[¶20] Giving deference to the hearing officer’s findings with regard to credibility and factual medical issues, *see Dubois*, 2002 ME 1, ¶ 16, 795 A.2d 696, it is apparent that the hearing officer could reasonably have been persuaded by the contrary evidence that it was highly probable that the IME was wrong. The reasons given were sufficient to support the hearing officer’s rejection of the IME’s medical findings.

III. CONCLUSION

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

The entry is:

The hearing officer'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 (Supp. 2012).

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