NED E. HOOD
(Appellant)

v.

MAINE DEPARTMENT OF CORRECTIONS
(Appellee)

and

STATE OF MAINE WORKERS' COMPENSATION DIVISION
(Insurer)

Argued: December 13, 2018
Decided: January 29, 2021

PANEL MEMBERS: Administrative Law Judges Pelletier, Hirtle, and Stovall
BY: Administrative Law Judge Pelletier

[¶1] Ned Hood appeals from a decision of a Workers' Compensation Board administrative law judge (*Elwin, ALJ*), issued after a remand from the Appellate Division, denying his Petition for Payment of Medical and Related Services and granting his Petition for Award in part. Mr. Hood contends that even after remand, the ALJ's findings are not supported by competent evidence and that the ALJ's application of the law to the facts is arbitrary or without rational foundation. Additionally, Mr. Hood argues that the record compels a finding of ongoing causation from the date of the injury to the present. We disagree and affirm the ALJ's decision.

I. BACKGROUND

[¶2] In 2016, Mr. Hood appealed from an ALJ decision dated November 17, 2016. The Appellate Division affirmed that decision in part and remanded in part for further findings of fact and conclusions of law on the sole issue of whether the record contained clear and convincing evidence contrary to the medical findings of an independent medical examiner (IME), appointed pursuant to 39-A M.R.S.A. § 312 (Pamph. 2020). The IME had opined that the effects of Mr. Hood's compensable respiratory injury had ended by September 23, 2009. *See Hood v. Maine Dep't of Corr.*, Me. W.C.B. No. 18-5 (App. Div. 2018).

[¶3] The Appellate Division's mandate included a direction that the ALJ issue additional findings addressing the IME's specific expertise with toxic exposure cases when compared to other expert medical opinions in the case. *Id.* at ¶ 10 & n. 2. The ALJ has complied with this mandate and issued additional findings, including findings regarding the doctors' comparative qualifications. The ALJ reached the same conclusion—that the effects of the August 28, 2009, respiratory injury ended as of September 23, 2009.

[¶4] In this appeal, Mr. Hood once again contends that the record compels a finding that the ALJ was required to reject the opinion of the IME and find instead that the effects of his work-related respiratory injury continue.

II. DISCUSSION

[¶5] The medical findings of an IME appointed pursuant to section 312 are entitled to increased weight in claims before an ALJ and must be adopted absent clear and convincing evidence to the contrary. 39-A M.R.S.A. § 312(7). The "clear and convincing evidence to the contrary" standard requires a showing "that it was highly probable that the record did not support the IME's medical findings." *Dubois v. Madison Paper Co.*, 2002 ME 1, ¶ 14, 795 A.2d 696. However, when the ALJ adopts the IME's findings, as in this case, we reverse only if those findings are not supported by competent evidence, or the record discloses no reasonable basis to support the decision. *Dillingham v. Great N. Paper*, Me. W.C.B. No. 15-7, ¶ 3 (App. Div. 2015); *May v. Saddleback, Inc.,* Me. W.C.B. No. 16-2, ¶ 5 (App. Div. 2016). Further, "[w]hen an [ALJ] concludes that the party with the burden of proof failed to meet that burden, we will reverse that determination only if the record compels a contrary conclusion to the exclusion of any other inference." *Kelley v. Me. Pub. Employees Ret. Sys.*, 2009 ME 27, ¶ 16, 967 A.2d 676.

[¶6] Consistent with the instructions of the previous appellate panel, the ALJ's decision on remand directly addressed Mr. Hood's central contention that the IME appointed by the board pursuant to section 312, Dr. Medrano, an internist, was unqualified to provide a medical opinion on Mr. Hood's pulmonary condition. While the ALJ did acknowledge that Mr. Hood's treating pulmonologist, Dr. LaPrad, may

have had more relevant qualifications than Dr. Medrano, she also found that Dr. LaPrad's opinions contrary to Dr. Medrano's were expressed in "tentative language that prevents his opinions from supporting causation in Mr. Hood's case."

[¶7] We agree that Dr. LaPrad's opinions are not expressed in a way that is sufficient to support a finding of causation to a reasonable degree of medical probability. *See Wickett v. Univ. of Maine Sys*., Me. W.C.B. No. 17-27, ¶¶ 11-12 (App. Div. 2017) (stating that in order to satisfy a party's burden of proof, expert medical evidence must not be speculative or based upon mere surmise or conjecture). Moreover, at oral argument counsel for Mr. Hood abandoned reliance on Dr. LaPrad's opinions to establish clear and convincing contrary evidence.

[¶8] Mr. Hood next contends that the opinion of his primary care provider, Dr. Baker, is incompetent to support the IME's findings. The IME had relied on the medical reports from Dr. Baker in reaching his conclusion. On remand, the ALJ noted that "Dr. Baker, who began treating Mr. Hood three weeks after the work exposure" to noxious chemicals fumes, opined that the effects of the exposure had resolved and were not the cause of any recurrence. The ALJ observed that Dr. Baker also opined that Mr. Hood had other medical conditions which would explain his respiratory difficulties, headaches, attention, concentration and memory deficits, and irritability. Contrary to Mr. Hood's contentions, Dr. Baker's treatment records are

competent evidence to support the ALJ's decision to adopt the findings of the IME. *See Dillingham,* Me. W.C.B. Dec. No. 15-7, ¶ 3.

[¶9] Mr. Hood also contends that the IME was compelled to adopt the contrary opinion of Dr. McLellan because Dr. McClellan's deposition testimony demonstrated that, in the area of environmental medicine, his qualifications are clearly superior to those of the IME, Dr. Medrano. However, the evidentiary record supports the ALJ's finding on remand that Dr. McLellan's curriculum vitae and deposition were never entered into evidence. The appellate division may not consider evidence that was not offered or admitted at the administrative hearing level. *See* Me. W.C.B. Rule, ch. 13, §§ 4(2), 8; *see also Samsara Mem'l Trust v. Kelly, Remmel & Zimmerman*, 2014 ME 107, ¶ 27, 102 A.3d 757.

[¶10] Moreover, competent evidence supports the ALJ's finding that Dr. McLellan's two written reports in evidence are "contradictory." The first report was not favorable to Mr. Hood, while the second report was favorable. It is the province of an ALJ, as fact finder, to accept or reject medical opinions, in whole or in part, and to determine which medical evidence is more persuasive in the context of the entire case. *See, e.g., Leo v. American Hoist and Derrick Co.*, 438 A. 2d 917, 920-21 (Me. 1981). The choice between competing expert medical opinions is a matter soundly within the purview of the ALJ who hears the case. *Id*.; *see also, White v. S.D. Warren Co.*, Me. W.C.B. 18-02, ¶ 5 (App. Div. 2018).

[¶11] Finally, Mr. Hood does not dispute that he neither objected to Dr. Medrano's appointment or moved to disqualify him at any time prior to the exam, at his deposition or at the hearing. Therefore, the ALJ was required to adopt the IME's opinion that the effects of the respiratory injury ended on September 23, 2009, absent clear and convincing evidence to the contrary in the record. *See* 39-A M.R.S.A. § 312 (7). Because the record does not compel a finding that such evidence exists, the ALJ's decision to adopt the IME's findings was not legally erroneous. *See Dubois*, 2002 ME 1, ¶ 16, 795 A. 2d 696 ("We give deference to the findings of [the ALJ], particularly with regard to medical/factual issues").

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 (Supp. 2018).

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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