

MATTHEW K. STEVENS
(Appellant)

v.

L.L. BEAN, INC.
(Appellee)

and

MAINE EMPLOYERS' MUTUAL INSURANCE CO.
(Insurer)

Conference held: January 25, 2017
Decided: March 3, 2017

PANEL MEMBERS: Administrative Law Judges Elwin, Hirtle, and Jerome
BY: Administrative Law Judge Jerome

[¶1] Matthew K. Stevens appeals from a decision of a Workers' Compensation Board administrative law judge (*Stovall, ALJ*) in which the ALJ denied his Petition for Review on the basis that Mr. Stevens failed to prove a change in medical circumstances that would warrant an increase from the ongoing partial incapacity benefits awarded pursuant to a 2013 decree (*Knopf, ALJ*).

[¶2] On a petition for review, the res judicata effect of an earlier determination can be overcome with proof of changed medical circumstances established by comparative medical evidence. *Grubb v. S.D. Warren Co.*, 2003 ME 139, ¶ 7, 837 A.2d 117. In order to determine whether changed circumstances

exist, it is necessary to determine the basis on which the previous award has been made. *McIntyre v. Great N. Paper, Inc.*, 2000 ME 6, ¶ 6, 743 A.2d 744.

[¶3] It was established in the 2013 decree that Mr. Stevens suffered the effects of a 2003 work injury to his low back, and that he was entitled to ongoing partial incapacity benefits due to that injury. In the current litigation, Mr. Stevens testified and also produced medical records as evidence of his current condition. Those included a Practitioner's Report completed by Roseanne Marquis, NP, on July 31, 2014, indicating that Mr. Stevens had no work capacity. Ms. Marquis further wrote on that date that Mr. Stevens reported that he was not getting better, that he rated his pain level at three out of ten, and that he had no change in symptoms since the prior visit. The record from the prior visit, which occurred on March 18, 2014, indicates that Mr. Stevens had reported that his pain level was at seven out of ten. At that time, Ms. Marquis reported that he had a modified work capacity.

[¶4] Based on the medical evidence presented, the ALJ concluded that Mr. Stevens did not meet his burden to establish that there had been a change in medical circumstances since the prior decree, and denied the petition.

[¶5] Mr. Stevens contends that the ALJ erred by failing to make a comparison between the medical evidence generated at the time of the 2013 decree and the current medical evidence, and that instead, he improperly used

medical records generated after the 2013 decree (namely, the March 18, 2014, report) as the point of comparison.

[¶6] We find no error. The ALJ evaluated the evidence that Mr. Stevens produced and appropriately determined that the medical records did not meet Mr. Stevens' burden to establish a change in medical circumstances because the records were contradictory and inconsistent, and thus not sufficiently persuasive.

[¶7] Moreover, Mr. Stevens failed to produce a comparative medical opinion in which a practitioner reviewed the medical evidence relied on in 2013 and opined that Mr. Stevens's medical circumstances had deteriorated. *See Leo v. American Hoist & Derrick Co.*, 438 A.2d 917, 921 (Me. 1981); *Klein v. St. of Me. Dep't of Labor*, Me. W.C.B. No. 15-5, ¶¶ 10-12 (App. Div. 2015). None of the medical records relied on by Mr. Stevens contain any reference to the medical reports that formed the basis of the 2013 decree; nor did they contain a comparative opinion as to how his condition had changed since that time.

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. 2016).

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