

TONY SINGH
(Appellant)

v.

TIME WARNER CABLE, INC.
(Appellee)

and

ESIS
(Insurer)

Argument held: June 8, 2016
Decided: August 12, 2016

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

[¶1] Tony Singh appeals from a decision of a Workers' Compensation Board administrative law judge (*Elwin, ALJ*) denying his Petition for Award and Petition for Payment of Medical and Related Services regarding an alleged December 29, 2013, date of injury. The ALJ found that there was not clear and convincing evidence contrary to the medical opinions of two independent medical examiners appointed pursuant to 39-A M.R.S.A. § 312 (Supp. 2015) who concluded that Mr. Singh had not suffered a work related injury. The ALJ therefore adopted the findings of the independent medical examiners. Mr. Singh contends that the medical opinions relied upon by the ALJ contained discrepancies and therefore should be rejected. We disagree, and affirm the decision.

I. BACKGROUND

[¶2] Tony Singh is a resident of Waterville who began working for Time Warner Cable as a service technician in October of 2009. His job duties involved traveling to customers' homes where he repaired and installed cable systems. On December 29, 2013, Mr. Singh traveled to a customer's home to repair a downed cable line. After determining that the cable line was not electrified, Mr. Singh picked up the cable, set and climbed a ladder, and reattached the cable line. After completing this task, while driving his company vehicle, Mr. Singh experienced a severe headache and difficulty seeing out of his left eye. He went to the emergency room where he was met by his supervisor, but does not have a recollection of what transpired, other than being cold and in a great deal of pain.

[¶3] Mr. Singh continued to experience similar debilitating symptoms and was eventually terminated by Time Warner Cable after attempting a period of accommodated work. Mr. Singh then filed petitions with the Workers' Compensation Board alleging that he suffered an electrical shock while working on December 29, 2013, and that the injury has been responsible for his symptoms and limitations since that time.

[¶4] As part of his claim for benefits under the Workers' Compensation Act, Mr. Singh was sent for independent medical examinations pursuant to 39-A M.R.S.A § 312 (Supp. 2015) with Dr. Stephan Bamberger, a physiatrist, and Dr.

Jeffery Barkin, a psychiatrist. After examining Mr. Singh, interviewing him, and reviewing his medical records, Dr. Bamberger concluded that Mr. Singh had not suffered a physical injury but that a psychiatric diagnosis would explain Mr. Singh's symptoms. After a similar process, Dr. Barkin stated that Mr. Singh's reported symptoms are not typical of an electrical shock injury and instead concluded that Mr. Singh suffered from a panic disorder with agoraphobia unrelated to his work.

[¶5] In addition to the independent medical examiners, Mr. Singh also saw Dr. Michael Mainen and Dr. Carlyle Voss at Time Warner Cable's request pursuant to 39-A M.R.S.A. § 207 (Supp. 2015). These examiners issued opinions consistent with those of the independent medical examiners. Mr. Singh's treating neuropsychologist, Dr. Anthony Podraza, had issued an opinion supportive of Mr. Singh's claim. However, the ALJ noted that Dr. Podraza's opinion was in part premised on Mr. Singh's recollection of finding a burn mark on his boot on the alleged date of injury. The ALJ found that this recollection is contrary to the contemporaneous emergency room records from the alleged date of injury, which contain no reference to such burn marks.

[¶6] After reviewing the medical opinions, the ALJ found that there was not clear and convincing evidence contrary to the persuasive opinions of the independent medical examiners, Dr. Bamberger and Dr. Barkin. The ALJ therefore

adopted those opinions as directed by statute in section 312(7) and relied on those opinions to deny Mr. Singh's claim. This appeal followed.

II. DISCUSSION

[¶7] Opinions of an independent medical examiner appointed pursuant to 39-A M.R.S.A. § 312 (Supp. 2015) are entitled to increased weight in claims before an ALJ of the Workers' Compensation Board. Pursuant to section 312(7), the ALJ must 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. The Law Court has interpreted the "clear and convincing evidence to the contrary" standard of section 312(7) to require a showing "that it was highly probable that the record did not support the independent medical examiner's medical findings." *Dubois v. Madison Paper, Co.*, 2002 ME 1, ¶ 14, 795 A.2d 696. Where, as here, an ALJ adopts the findings of the independent medical examiner, the ALJ's decision may only be reversed on appeal if the independent medical examiner's findings are not supported by any competent evidence, or the record discloses no reasonable basis to support the decision. *See Pomerleau v. United Parcel Serv.*, 464 A.2d 206, 209 (Me. 1983). *See also Dillingham v Great Northern Paper*, Me. W.C.B. No. 15-7, ¶ 3 (App. Div. 2015).

[¶8] In his brief and at oral argument, Mr. Singh contends that there are shortcomings in the medical evidence relied upon by the ALJ. Specifically, he

argued that there are remnants of burn marks present on his body consistent with an electrical shock injury and that the independent medical examiners did not conduct a thorough enough examination to find the burn marks. Even assuming that the facts underlying Mr. Singh's argument to be true, the standard of review set out by the Law Court is not whether the ALJ's conclusion is the only correct conclusion, but whether there is competent evidence in the record to support the medical opinions of Dr. Bamberger, Dr. Barkin, and the ALJ's adoption of those opinions.

[¶9] In the decision, the ALJ discussed the full examination and review of medical records conducted by Dr. Bamberger. Additionally, the ALJ noted Dr. Barkin's relevant expertise in this case of alleged electrical shock injury because of his medical experience as medical director of electroconvulsive therapy services. Similarly, the ALJ noted that the opinions of the independent medical examiners were consistent with medical opinions issued by Dr. Mainen and Dr. Voss. When buttressed with evidence of this kind, the independent medical examiner opinions are supported by competent evidence and the record discloses a reasonable basis to support the ALJ's decision. We therefore affirm the ALJ's denial of Mr. Singh's petitions.

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. 2015).

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