

LIRIAN PAZ
(Appellee)

v.

H.P. HOOD, LLC
(Appellant)

and

ESIS
(Insurer)

Conference held: February 10, 2021
Decided: May 31, 2022

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

[¶1] H.P. Hood appeals from a decision of a Workers' Compensation Board administrative law judge (*Collier, ALJ*) granting Lirian Paz's Petitions for Award of Compensation and for Payment of Medical and Related Services (in part), and Hood's Petition for Apportionment as against Barber Foods and Global Industrial Services. Hood contends that there is no competent evidence to support the ALJ's finding that Ms. Paz sustained a work-related gradual injury to her right upper extremity on January 19, 2017, and asserts that its percentage of responsibility for Ms. Paz's partial incapacity should be reduced to include the left upper extremity only. We vacate the decision in part and remand for further findings.

I. BACKGROUND

[¶2] Lirian Paz worked for Barber Foods (later known as AdvancePierre Foods) as a line worker and lugger from 2004 to September 2016. While employed there she reported multiple bilateral upper extremity injuries. In November 2015, Ms. Paz began working part-time as a cleaner at Global, a commercial cleaning company, in addition to her full-time work at Barber Foods.

[¶3] In September 2016, Ms. Paz left employment at Barber Foods and began working full-time at Hood as a debagger, moving bags of empty milk bottles from a trailer to her work station and loading them onto an assembly line. She continued to work part-time for Global. She was terminated from Hood on January 2, 2018, for reasons unrelated to any work injury. After her termination from Hood, she increased her hours at Global, where she worked full-time as a supervisor until she resigned on September 7, 2018. She reported gradual bilateral upper extremity injuries to Global on the date she resigned.

[¶4] Ms. Paz was seen at Martin's Point on January 12 and January 18, 2017, for worsening left elbow pain and intermittent right hand weakness, tingling and numbness, and was diagnosed with left lateral epicondylitis. She reported to Hood that she had sustained a left elbow injury from cumulative motion on January 19, 2017.

[¶5] Ms. Paz filed Petitions against Hood, Barber Foods, and Global for her numerous injuries over the years, and Hood filed its Petition for Apportionment. Her claims against Barber Foods and Global were settled before the decision in this case was issued, but the apportionment petition remained before the ALJ for decision.

[¶6] Ms. Paz was examined by Dr. Richard Mazzei pursuant to 39-A M.R.S.A. § 312 on October 31, 2018, and May 17, 2019. Dr. Mazzei issued a report following each examination and was deposed on July 23, 2019. Based upon Dr. Mazzei's opinion, the ALJ found that that Ms. Paz sustained work-related bilateral upper extremity injuries on March 11, 2015, at Barber Foods, and on September 7, 2018, at Global. The ALJ also found that Ms. Paz sustained a gradual work-related injury on January 19, 2017, at Hood, described as aggravation of her underlying condition of bilateral epicondylitis.

[¶7] In regards to the right upper extremity, the ALJ relied on the deposition testimony of Dr. Mazzei and found as follows:

Dr. Mazzei specifically stated, in his deposition testimony, that Ms. Paz's work activities through September 7, 2018 aggravated and accelerated her right epicondylitis and her need for treatment for that condition, and he stated that her restrictions on both arms were based on the employment for all three employers. That is consistent with his 2019 report. Therefore, I find and conclude that Ms. Paz did sustain a work injury on January 19, 2017, in the nature of an aggravation of her underlying condition of bilateral epicondylitis. I further conclude that the work Ms. Paz did for Hood contributed to her disability from this condition in a significant manner, so this injury is compensable under 39-A M.R.S.A. §201(4).

[¶8] The ALJ accordingly granted Ms. Paz’s Petition for Award and Petition for Payment of Medical and Related Services.¹ The ALJ also granted the Petition for Apportionment, assigning 12.5% responsibility for the bilateral elbow injury to Hood based on Dr. Mazzei’s testimony. Both parties filed Motions for Further Findings of Fact and Conclusions of Law, which the ALJ denied. Hood appeals.

II. DISCUSSION

[¶9] Hood does not contest the findings regarding the left upper extremity. Instead, Hood contends the finding that Ms. Paz sustained a gradual *right* upper extremity injury due to her employment at Hood as of January 19, 2017, is unsupported by any evidence in the record, and that Hood should not be held responsible to pay any portion of benefits for the right elbow condition.

[¶10] The Law Court has defined a gradual injury as “a single injury caused by repeated, cumulative trauma without any sudden incapacitating event.” *Derrig v. Fels Co.*, 1999 ME 162, ¶ 7, 747 A.2d 580. A gradual injury occurs on the date when the injury manifests itself. *Jensen v. S.D. Warren Co.*, 2009 ME 35, ¶ 26, 968 A.2d 528. “The Law Court’s decisions do not establish a bright line rule for when a gradual injury manifests itself, but demonstrate that the date should be determined based on multiple considerations and the salient circumstances of each case.”

¹ The ALJ granted the Petition for Payment of Medical and Related Services in part, finding that Hood was responsible for its portion of the medical treatment to date, but not for proposed platelet-rich plasma therapy.

Moscone v. Millinocket Regional Hosp., Me. W.C.B. No. 19-27, ¶ 5 (App. Div. 2019). Those considerations and circumstances may include “the time of the onset of symptoms, the time medical care is sought or a medical diagnosis is provided, or the date the employee goes out of work or loses time due to the injury.” *Id.* ¶ 11.

[¶11] Because Hood filed a Motion for Findings of Fact and Conclusions of Law, the ALJ was under an affirmative duty pursuant to 39-A M.R.S.A. § 318 to make additional findings that would create an adequate basis for appellate review if the original findings were insufficient. *See Coty v. Town of Millinocket*, 444 A.2d 355, 357 (Me. 1982); *Malpass v. Philip J. Gibbons*, Me. W.C.B. No. 14-19, ¶ 18 (App. Div. 2014). An ALJ’s decision may be considered inadequate for appellate review and may be remanded for additional findings when the findings appear to be inconsistent or unclear. *Spear v. Town of Wells*, 2007 ME 54, ¶¶ 13, 16, 922 A.2d 474 (remanding for additional findings when it was unclear whether the hearing officer treated the injury as a preexisting condition or a subsequent nonwork injury); *Derrig*, 1999 ME 162, ¶¶ 1, 8, 747 A.2d 580 (remanding for clarification of inconsistent findings regarding a gradual injury).

[¶12] In this matter, the basis for the determination that a gradual injury to Ms. Paz’s right elbow occurred on January 19, 2017, is unclear. Although the section 312 examiner testified that all three employers contributed to the injury in a significant manner and that Ms. Paz’s work through September 7, 2018, aggravated

and accelerated her right epicondylitis, he did not provide any guidance regarding when a right elbow injury manifested due Ms. Paz's work at Hood.

[¶13] Moreover, the ALJ did not identify the evidence that supports a finding that Ms. Paz sustained a gradual right upper extremity injury as of January 19, 2017. On that date, Ms. Paz reported left arm symptoms to Hood. There are no findings, for example, that Ms. Paz had an onset of right upper extremity symptoms, sought medical care, received a medical diagnosis, or lost time due to the right upper extremity injury on that date.

[¶14] We recognize that review of an ALJ's decision addressing whether an injury is compensable pursuant to the Act is deferential. *Cox v. Coastal Prods. Co., Inc.*, 2001 ME 100, ¶ 12, 774 A.2d 347. However, because the basis for the ALJ's decision regarding when a right elbow injury occurred at Hood is unclear, we conclude that the findings in the decree are inadequate for appellate review.

III. CONCLUSION

[¶15] Because Hood requested additional findings of fact on the issue of whether a gradual right elbow injury occurred due to Ms. Paz's employment at Hood and the date of that injury, and because the findings in the initial decree are unclear, we remand for additional findings. The ALJ should identify the evidence supporting when the right elbow injury manifested.

The entry is:

The decision of the Workers' Compensation Board administrative law judge is vacated in part, and the case remanded for additional findings of fact and conclusions of law consistent with this decision.

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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