

STEFAN BUCHHOLZ  
(Appellant)

v.

GRATWICK ENTERPRISES, INC., d/b/a BONNEY PERSONNEL  
(Appellee)

and

MAINE EMPLOYERS' MUTUAL INSURANCE COMPANY  
(Insurer)

Argued: January 26, 2015  
Decided: February 10, 2015

Panel Members: Hearing Officers Stovall, and Elwin and Jerome  
By: Hearing Officer Stovall

[¶1] Stefan Buchholz appeals from a decision of a Workers' Compensation Board hearing officer (*Collier, HO*) granting his Petitions for Award and for Payment of Medical and Related Services in part. The hearing officer determined that Mr. Buchholz sustained a work-related temporary exacerbation of preexisting osteoarthritis in his bilateral upper extremities as of August 9, 2012, but that the work-related component of his condition had resolved by December 7, 2012. Mr. Buchholz asserts that the hearing officer erred when finding that the work-related injury had resolved as of December 7, 2012, and by not addressing medical evidence from Dr. Khoury and practitioner Julia Wright.

[¶2] Despite Mr. Buchholz's contentions, the hearing officer did not err when finding that the employee's bilateral hand condition had resolved by December 7, 2012, and awarding no further incapacity benefits. Dr. Donovan was appointed as independent medical examiner pursuant to 39-A M.R.S.A. § 312 (Supp. 2014). Section 312(7) requires the hearing officer to adopt the medical findings of the independent medical examiner unless there is clear and convincing evidence to contradict those findings in the record. Section 312(7) reads:

**7. Weight.** 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.

[¶3] Dr. Donovan rendered the medical opinion that Mr. Buchholz's work-related injury had resolved by December 7, 2012, and that his ongoing problems are caused by a preexisting condition. The hearing officer, finding no clear and convincing evidence to the contrary, properly adopted Dr. Donovan's medical findings. Further, the hearing officer referenced other competent evidence that supports those findings, including the medical evidence from Dr. Gerson. There was no error.

[¶4] Mr. Buchholz next contends that the hearing officer should have considered the medical reports from Dr. Khoury and practitioner Julia Wright

when rendering his opinion. However, Dr. Donovan's report indicates that he did give consideration to Ms. Wright's reports. With respect to Dr. Khoury, those records were not submitted into evidence to the hearing officer. Thus, pursuant to section 312(7), they cannot be considered as contrary evidence to the independent medical examiner's findings.<sup>1</sup>

[¶5] The hearing officer's factual findings are supported by competent evidence in the record, and the hearing officer neither misconceived nor misapplied the law in finding that Mr. Buchholz's injury resolved by December 7, 2012. *See Moore v. Pratt & Whitney Aircraft*, 669 A.2d 156, 158 (Me. 1995) (quotation marks omitted).

The entry is:

The hearing officer's decision is affirmed.

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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. 2014).

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<sup>1</sup> Mr. Buchholz also raises the issue of not having an interpreter at his medical appointment with Dr. Glass. He contends that Dr. Glass misunderstood him and that misunderstanding resulted in inaccurate statements in her report. Dr. Glass opined that Mr. Buchholz did not have a work-related injury. However, the hearing officer did not adopt Dr. Glass's opinion. Instead, he relied on the opinion of the section 312 examiner, Dr. Donovan. The hearing officer found that an interpreter was present for Mr. Buchholz's examination with Dr. Donovan.

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