

RICHARD MEADE IV
(Appellant)

v.

SOUTHWORTH-MILTON, INC.
(Appellee)

and

SENTRY INSURANCE CO.
(Insurer)

Decided: March 26, 2013
Conferenced: February 26, 2013

PANEL MEMBERS: Hearing Officers Collier, Elwin, and Goodnough
BY: Hearing Officer Goodnough

[¶1] Richard Meade appeals from a decision of a Workers' Compensation Board hearing officer (*Jerome, H.O.*) concluding that his psychological permanent impairment related to a 2003 work injury is 0%, based upon the findings of an independent medical examiner (IME). *See* 39-A M.R.S.A. § 312(7) (Supp. 2012). Mr. Meade contends that the hearing officer erred when applying section 312(7) by failing to consider clear and convincing contrary evidence in the record that would have, had it been accepted, resulted in a finding of 7% permanent impairment attributable to his psychological condition. Because Mr. Meade was found in a prior decree to have 10% permanent impairment related to the physical aspects of

the 2003 injury, an additional 7% would have resulted in Mr. Meade's continued entitlement to partial incapacity benefits for the duration of his incapacity. *See* 39-A M.R.S.A. § 213(1) (2001).

[¶2] When determining whether clear and convincing medical evidence contrary to the IME's findings is present, "we examine whether the hearing officer could reasonably have been persuaded that the required factual finding was or was not proved to be highly probable." *Dubois v. Madison Paper Co.*, 2001 ME 1, ¶ 14, 795 A.2d 696 (quotation marks omitted). We must therefore "determine whether the hearing officer could have been reasonably persuaded by the contrary medical evidence that it was highly probable that the record did not support the IME's medical findings." *Id.*

[¶3] Mr. Meade contends that the hearing officer erred because she looked only to his lay testimony (describing his level of impairment) to the exclusion of relevant medical evidence, in determining that he failed to present clear and convincing evidence contrary to the opinion expressed by the IME. He specifically contends that it was error to disregard a report from Dr. Carlyle Voss, generated in 2009 in the context of the prior litigation, in which Dr. Voss opined that Mr. Meade's psychological permanent impairment was 7%. We find no error.

[¶4] First, the hearing officer specifically referred to Dr. Voss's report in the decree. Second, and more critically, the hearing officer noted that Dr. Voss opined

that Mr. Meade had not yet reached maximum medical improvement (MMI) at the time he provided his opinion. Permanent impairment is defined as “any anatomic or functional abnormality or loss existing after the date of maximum medical improvement that results from the injury.” 39-A M.R.S.A. § 102(16) (Supp. 2012). Absent a finding of MMI, permanent impairment cannot, as a matter of law, be established. *Id.* Therefore, Dr. Voss’s opinion, proffered well before the IME determined that Mr. Meade had reached MMI, did not constitute medical evidence sufficient to contradict the IME’s findings regarding psychological permanent impairment.

The entry is:

The decision of the hearing officer 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 seeing appellate review within 20 days thereafter. 39-A M.R.S.A. § 322 (Supp. 2012).

Attorney for Appellant/Employer:
James J. MacAdam, Esq.
Nathan A. Jury, Esq.
David E. Hirtle, Esq.
MACADAM JURY, P.A.
208 Fore Street
Portland, ME 04101

Attorney for Appellee/Employer:
Allan M. Muir, Esq.
PIERCE ATWOOD, LLC
Merrill’s Wharf
254 Commercial Street
Portland, ME 04101