

RICHARD THURSTON
(Appellant)

v.

C.W. HAYDEN, INC.
(Appellee)

Argued: December 10, 2015
Decided: December 28, 2015

PANEL MEMBERS: Administrative Law Judges¹Jerome, Elwin, and Stovall
BY: Administrative Law Judge Elwin

[¶1] Richard Thurston appeals from a decision of a Workers' Compensation Board Administrative Law Judge (*Goodnough, ALJ*), granting his Petition for Award in part, denying his Petitions for Payment of Medical and Related Services, for Restoration, and for a Provisional Order, all related to a March 27, 2012, date of injury. We affirm the ALJ's decision.

[¶2] The ALJ based his decision on the medical findings of Dr. Donovan, who was appointed as independent medical examiner (IME) pursuant to 39-A M.R.S.A. § 312 (Supp. 2015). The hearing officer was required to adopt Dr. Donovan's medical findings absent clear and convincing contrary evidence in the

¹ Pursuant to P.L. 2015, ch. 297 (effective October 15, 2015) Workers' Compensation Board hearing officers are now designated administrative law judges.

record. *Id.* § 312(7). “Contrary evidence does not include medical evidence not considered by the independent medical examiner.” *Id.*

[¶3] Mr. Thurston raises numerous issues on appeal. We explicitly consider these two: (1) whether the ALJ abused his discretion by not considering certain medical records that were not timely submitted as evidence contrary to the independent medical examiner’s opinion; and (2) whether there was, nevertheless, clear and convincing evidence contrary to the IME’s findings.

[¶4] With regard to the first issue, Mr. Thurston was given ample opportunity to provide the medical records he wished Dr. Donovan to review in advance of the deposition. In an order dated October 6, 2014, the ALJ gave Mr. Thurston specific instructions on how and when those records were to be submitted. The records were not provided consistently with that Order. Accordingly, the ALJ did not exceed the bounds of his discretion when he declined to consider the proffered medical records as evidence contrary to the IME’s medical findings. *See Kuvaja v. Bethel Savings Bank*, 495 A.2d 804, 806 (Me. 1985) (applying abuse of discretion standard of review for administrative body’s ruling on a motion to dismiss); *Matthews v. Shaw’s Supermarkets*, Me. W.C.B. No. 15-25, ¶ 28 (App. Div. 2015) (applying abuse of discretion standard to ALJ’s decision to conduct hearings in a certain manner).

[¶5] Second, when considering whether clear and convincing medical evidence contrary to the IME’s findings permits a rejection of those findings by the ALJ, “we determine whether the [ALJ] could reasonably have been persuaded by the contrary medical evidence that it was highly probable that the record did not support the IME’s medical findings.” *Dubois v. Madison Paper Co.*, 2002 ME 1, ¶ 14, 795 A.2d 696 (quotation marks omitted). However, when, as in this case, the hearing officer adopts the IME’s findings, we will reverse only if those findings are not supported by any competent evidence, or the record discloses no reasonable basis to support the decision. *See Dillingham v. Great N. Paper*, Me. W.C.B. No. 15-7, ¶ 3 (App. Div. 2015). Because the ALJ’s findings are supported by competent evidence, and the record provides a reasonable basis to support the ALJ’s decision, we affirm.

[¶6] We have considered Mr. Thurston’s remaining contentions and, having reviewed the record and the applicable law, we conclude that the ALJ’s factual findings are supported by competent evidence, and that the ALJ did not act outside his discretion, misconceive, or misapply the law. *See Kuvaja*, 495 A.2d at 806; *Pomerleau v. United Parcel Serv.*, 464 A.2d 206, 209 (Me. 1983).

The entry is:

The ALJ’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. 2014).

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