

MICHELLE BROWN
(Appellant)

v.

DiMILLO'S, INC.
(Appellee)

and

MAINE EMPLOYERS' MUTUAL
INSURANCE COMPANY
(Insurer)

Argued: December 4, 2025

Decided: March 19, 2026

PANEL MEMBERS: Administrative Law Judges Sands, Rooks and Biddings
By: Administrative Law Judge Biddings

[¶1] Michelle Brown appeals from a decision of a Workers' Compensation Board administrative law judge (*Stovall, ALJ*) granting in part her Petitions for Review, for Award, and for Medical and Related Services pertaining to an August 1, 2018, date of injury, but denying her request for benefits beyond March 30, 2020. Ms. Brown contends that the ALJ erred in (1) determining that Ms. Brown did not meet her burden of proof because her testimony was not credible; (2) accepting the findings and opinions of the independent medical examiners as opposed to her treating physicians; and (3) denying her request to include concurrent earnings in

her average weekly wage.¹ After careful review of the law and the evidentiary record, we affirm the decision.

I. BACKGROUND

[¶2] Ms. Brown represented herself throughout this appeal. By agreement of the parties, in lieu of a formal record on appeal or appendix, we draw the background from the hearing transcripts, the exhibits submitted to the ALJ in the underlying litigation, and the instances where the parties agree on the facts in their briefs.²

[¶3] On August 1, 2018, Ms. Brown was working at DiMillo's, Inc., when a co-worker bumped her hip. She was evaluated at Concentra and given a diagnosis of lumbar pain with pain radiating down her right leg. She was referred to physical therapy and given restrictions on lifting and sitting. Ms. Brown underwent an MRI of her lumbar spine on August 7, 2018, which revealed an annular tear. Dr. Esponnette opined on August 29, 2018, that the annular tear was contributing to Ms. Brown's discomfort. Ms. Brown also suffered from preexisting depression, anxiety,

¹ Ms. Brown has also raised claims of disability discrimination and gender bias under federal law in her filings with the Appellate Division. The Workers' Compensation Board has "only such authority as is conferred upon it by express legislative grant or such as arises therefrom by implication as incidental to full and complete exercise of the powers granted." *Clark v. Int'l Paper Co.*, 638 A.2d 65, 66 (Me. 1994) (quotation marks omitted). Because the board lacks the authority to address claims under federal law, the Appellate Division will not address those issues.

² Ms. Brown has submitted several documents with her appellate filings that were not a part of the record before the ALJ in this matter. The Appellate Division's review of an ALJ's decision is limited "to a determination of whether the record discloses any reasonable basis to support the [ALJ's] decision." *Dunton v. E. Fine Paper Co.*, 423 A.2d 512, 516 (Me. 1980). Accordingly, evidence that was not part of the record in the underlying litigation will not be considered. *McLaughlin v. Cmty. Living Ass'n*, Me. W.C.B. No. 24-09, ¶ 1, n.2 (App. Div. 2024).

and an eating disorder. She sought treatment from numerous medical practitioners for her mental health conditions and for alleged chronic pain, and she received a diagnosis of Chronic Regional Pain Syndrome (CRPS). She began walking with a walker and using a wheelchair. Ms. Brown never returned to work, and DiMillo's voluntarily paid her workers' compensation benefits.

[¶4] DiMillo's hired an investigator to conduct surveillance on Ms. Brown. The surveillance evidence showed Ms. Brown walking for extended periods and over significant distances without stopping and without a noticeable limp or any ambulatory aid. Thereafter, DiMillo's filed a discontinuance pursuant to 39-A M.R.S.A § 205(9)(B)(1). Ms. Brown filed her petitions, and obtained a provisional order reinstating her benefits.

[¶5] During the course of litigation, Ms. Brown underwent three independent medical examinations. *See* 39-A M.R.S.A § 312.³ On September 12, 2020, she was

³ Title 39-A M.R.S.A. § 312 provides, in relevant part:

3. Appointment. If the parties to a dispute can not agree on an independent medical examiner of their own choosing, the board shall assign an independent medical examiner from the list of qualified examiners to render medical findings in any dispute relating to the medical condition of a claimant, including but not limited to disputes that involve the employee's medical condition, improvement or treatment, degree of impairment or ability to return to work.

....

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.

seen by Dr. Barkin, a psychiatrist, via telemedicine appointment. Ms. Brown was lying in bed during the examination. She told Dr. Barkin that this was the only tolerable position for her.

[¶6] Dr. Barkin found that Ms. Brown met the diagnostic criteria for major depressive disorder and somatic symptom disorder. He wrote that the somatic disorder was a result of the work injury and that Ms. Brown's diagnosis of major depressive disorder was also significantly worsened by the chronic pain. Dr. Barkin opined that Ms. Brown's primary work restriction was related to her chronic pain. He wrote in his report:

At the present time, Ms. Brown is bedbound. She states that she is unable to sit or stand or engage in other activities secondary to severe and persistent back pain. She states that this is the primary reason that she is unable to work. Her mood is depressed, and she is isolative. Ms. Brown is experiencing symptoms of depression and symptoms of chronic pain. These two diagnoses are intertwined.

[¶7] On November 17, 2020, Ms. Brown was seen by Dr. Donovan for a section 312 examination addressing her physical injury. In addition to conducting an examination and reviewing her medical records, Dr. Donovan reviewed the surveillance evidence obtained by DiMillo's. He determined that Ms. Brown's reported pain was disproportionate to objective findings, noting "when she believed she was unobserved, her gait and movement markedly improved." He concluded that the effects of the work injury had resolved sometime between January 15, 2019, and November 17, 2020.

[¶8] In January of 2022, Dr. Bamberger performed an independent medical examination. He disagreed with the diagnosis of CRPS, and opined that Ms. Brown’s August 1, 2018, injury consisted of “an initial lumbar, soft tissue contusion and strain,” which “should have resolved in 4-6 weeks, at most.”

[¶9] Dr. Bamberger also reviewed the surveillance evidence obtained by DiMillo’s. Addressing inconsistencies between the surveillance and Ms. Brown’s representations regarding her condition, Dr. Bamberger wrote that “secondary gain and deliberate exaggeration of complaints is a very likely possibility.” He went on to state that:

I firmly believe in giving the patient the benefit of the doubt but once they cross over the line and start to feign symptoms in order to elicit sympathy or gain other benefits, then they put their whole injury claim into doubt. Finally, I should mention that Dr. Barkin opined that Ms. Brown’s *chronic pain* was the disabling factor NOT her psychiatric diagnoses, therefore since her pain complaints lack credibility, I do not see a basis for ongoing restrictions or treatment at this time.

[¶10] On June 3, 2023, Dr. Bamberger issued an addendum to his report affirming his opinion that Ms. Brown does not have CRPS and stating that the “dramatic inconsistency” between the surveillance evidence and her presentation to him and to other providers undermined her claim that there was a work-related physical problem.

[¶11] On July 17, 2023, the parties deposed Dr. Bamberger. During his deposition, Dr. Bamberger offered some inconsistent testimony. Under questioning

by Ms. Brown's attorney, Dr. Bamberger stated that most likely Ms. Brown's August 1, 2018, work injury resulted in an annular tear and then evolved into a chronic pain syndrome with some psychological overlay. However, Dr. Bamberger later testified that the annular tear was more "probably preexisting" and offered his opinion that Ms. Brown did not have a chronic pain syndrome. He specifically testified about the difference between Ms. Brown's presentation in his office and her activities as shown on surveillance, stating that there is "a complete disconnect between what she said she's experiencing and her actions." He stated:

[O]nce the person's credibility comes into question, you know, then you have to question was she really experiencing this much pain or was she not. And once you decide that well, you know, she's fallen into the sort of area of, you know, secondary gain, exaggeration of her complaints, you know, variable presentations to different people and so on, then you have to take the complaints of pain with a significant grain of salt, and that's the crux of the case as far as I'm concerned.

[¶12] Two testimonial hearings were held in this matter—on April 16, 2021, and May 9, 2023. Ms. Brown was represented by a worker advocate at the April 2021 hearing. By the time of the May 2023 hearing, however, she was represented by private counsel. During the 2021 hearing, counsel for DiMillo's represented that the parties agreed that Ms. Brown's wage was \$740.13 and the worker advocate did not dispute that statement. At the 2023 hearing, however, Ms. Brown's attorney asserted that Ms. Brown had concurrent earnings from her work as a makeup artist at the time of the work injury.

[¶13] The ALJ granted Ms. Brown’s petitions in part, awarding benefits up to March 30, 2020, but denied her request for benefits beyond that date. He rejected Dr. Barkin’s medical findings to the extent those findings indicated that her mental health problems were connected to her work injury, and found Dr. Bamberger’s medical findings most persuasive. The ALJ determined that Ms. Brown’s testimony regarding her condition lacked credibility to the point where she was unable to carry her burden of proof.

[¶14] The ALJ did determine that certain medical records constituted clear and convincing evidence contrary to Dr. Bamberger’s conclusion that the effects of the work injury had resolved by November 5, 2019, finding instead that Ms. Brown’s condition had not significantly improved until March 2020. The ALJ rejected her claim regarding concurrent earnings based on a determination that the evidence lacked credibility.

[¶15] Ms. Brown filed a motion for further findings of fact and conclusions of law on December 6, 2024.⁴ The ALJ denied that motion by order dated December 20, 2024, after which Ms. Brown filed this appeal.

⁴ It appears that the ALJ permitted Ms. Brown to file the motion for further findings of fact and conclusions of law even though the time period allotted for filing such a motion prescribed in 39-A M.R.S.A. §318 had passed prior to December 6, 2024.

II. DISCUSSION

A. Standard of Review

[¶16] In general, the role of the Appellate Division “is limited to assuring that the [ALJ’s] findings are supported by competent evidence, that [the] decision involved no misconception of applicable law and that the application of the law to the facts was neither arbitrary nor without rational foundation.” *Moore v. Pratt & Whitney Aircraft*, 669 A.2d 156, 158 (Me. 1995) (quotation marks omitted). Competent evidence has been defined by the Law Court as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *In re Maine Clean Fuels, Inc.*, 310 A.2d 736, 751 (Me. 1973). Because Ms. Brown requested findings of fact and conclusions of law following the decision, the Appellate Division is to “review only the factual findings actually made and the legal standards actually applied by the [ALJ].” *Daley v. Spinnaker Indus., Inc.*, 2002 ME 134, ¶ 17, 803 A.2d 446 (quotation marks omitted).

B. Credibility Determination and Burden of Proof

[¶17] Ms. Brown contends the ALJ erred when disbelieving her testimony regarding her alleged continued symptoms and concluding that she lacked

credibility. Ms. Brown asserts that the ALJ “used psychological labels to discredit her physical symptoms and deny needed care.”⁵ We disagree.

[¶18] The administrative law judge “who hears and sees the witnesses, who observes their hesitations, inflections and emphases, is in a more favorable position to judge their credibility than the appellate court which only reads the printed testimony.” *Beaulieu v. Francis Bernard, Inc.*, 393 A.2d 163, 166 (Me. 1978) (citing *Matthews v. R.T. Allen & Sons, Inc.*, 266 A.2d 240, 244 (Me. 1970)). As such, and the Appellate Division grants deference to the ALJ’s credibility determinations. *Traussi v. B & G Foods, Inc.*, Me. W.C.B. No. 15-10, ¶ 16 (App. Div. 2015).

[¶19] For example, in *Boober v. Great N. Paper Co.*, 398 A.2d 371, 375 (Me. 1979), the appellant contended that the board’s Commissioner had disregarded or misapprehended competent evidence favorable to the claimant, therefore the Commissioner’s findings should be set aside. The Law Court rejected this argument, stating:

The evidentiary conflicts in this case made credibility a pivotal concern. We decline to override, on the basis of our examination of the cold record, the Commissioner’s assessment of the witnesses’ credibility. The Commissioner’s findings are supported by competent evidence, including that specifically cited in the findings, and are therefore final.

Id.

⁵ Ms. Brown’s brief contains an analysis of “*Kowalski v. Michigan Department of Health and Human Services.*” The Appellate Division is unable to locate any case by that name.

[¶20] There is no dispute that Ms. Brown, as the petitioning party, bore the burden of proof to establish all elements of her claim on a more probable than not basis. *Rowe v. Bath Iron Works Corp.*, 428 A.2d 71, 73 (Me. 1981). The ALJ considered Ms. Brown's testimony, the reports of her medical providers, the independent medical examiners' section 312 reports, and the surveillance evidence submitted by DiMillo's. The ALJ noted that both Dr. Bamberger and Dr. Donovan reported that Ms. Brown's subjective complaints did not match their objective findings, and that her providers' medical findings were based on Ms. Brown's subjective representations. The ALJ also observed the discrepancies between Ms. Brown's testimony and the surveillance evidence.

[¶21] Consistent with the Court's decision in *Boober*, we regard the ALJ's credibility findings as final, and we do not disturb them. The ALJ carefully evaluated the evidence and justifiably found that Ms. Brown did not meet her burden of proof.

C. Acceptance of the Independent Medical Examiner Opinions

[¶22] Ms. Brown contends that the evidence, including voluminous records from her treating medical providers, compels a finding that she continues to experience disabling symptoms due to her work injury, including CRPS. She asserts that the ALJ erred in accepting the opinion of Dr. Bamberger and relying on that opinion to find that Ms. Brown was misreporting her symptoms and that the effects of her injury have ended.

[¶23] The medical findings of the independent medical examiners appointed pursuant to 39-A M.R.S.A. § 312 are entitled to increased weight and must be adopted absent clear and convincing evidence to the contrary. 39-A M.R.S.A. § 312(7). We therefore construe Ms. Brown’s argument as asserting that that clear and convincing evidence exists contrary to the section 312 examiners’ findings.

When considering whether clear and convincing medical evidence contrary to the IME’s findings permitted a rejection of those findings by the hearing officer, “we determine whether the hearing officer 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, where, as here, 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 Pomerleau v. United Parcel Serv.*, 464 A.2d 206, 209 (Me. 1983).

Dillingham v. Great N. Paper, Me. W.C.B. No.15-7, ¶ 3 (App. Div. 2015). To the extent there were conflicts in the evidence, the ALJ was required to choose among conflicting expert opinions on factual questions. *Bruton v. City of Bath*, 432 A.2d 390, 394 (Me. 1981). Additionally, when there is ambiguity in the independent medical examiner’s findings, “it is incumbent on the [ALJ] to consider the larger context in which those statements are offered to construe the intent of the examining physician.” *Oriol v. Portland Hous. Auth.*, Me. W.C.B. No. 14-35, ¶ 12 (App. Div. 2014).

[¶24] The ALJ reasonably rejected Dr. Barkin’s medical findings because he could not confirm that Dr. Barkin had reviewed the surveillance evidence. And, despite ambiguity in Dr. Bamberger’s stated findings, the ALJ construed his report and deposition testimony overall to mean that Ms. Brown “intentionally does not accurately describe her functionality.” The ALJ noted that in addition to the independent medical examiners, Ms. Simons, a functional capacity evaluator, and Dr. Castorina, one of Ms. Brown’s treating physicians, had found that her pain complaints were inconsistent with objective findings.

[¶25] Accordingly, we conclude that the ALJ’s adoption of Dr. Bamberger’s medical findings is supported by competent evidence, and the record provides a reasonable basis to support the ALJ’s decision.

D. Concurrent Earnings

[¶26] Ms. Brown asserts that the ALJ erred in failing to include concurrent earnings in the calculation of her average weekly wage. Although Ms. Brown contended at oral argument that the tax documentation regarding her concurrent earnings was part of the record, that statement was inaccurate. Our review of the record indicates the evidence of concurrent earnings was limited to Ms. Brown’s testimony and an exhibit comprising invoices that Ms. Brown had created.⁶ Because

⁶ Ms. Brown included an exhibit labeled “W-1” with her appellate brief that consisted of tax documents and wage information. Those documents were not part of the record before the ALJ in this matter and therefore will not be considered on appeal.

the ALJ determined that Ms. Brown was not credible, it was reasonable for him to reject the claim of concurrent earnings when that claim relied solely on Ms. Brown's testimony and invoices she had prepared.

III. CONCLUSION

[¶27] The ALJ, as the fact-finder and sole judge of the witnesses' credibility, was within his authority to reject the employee's version of the facts. The ALJ's adoption of Dr. Bamberger's opinion was supported by competent evidence and the record provides a reasonable basis for the ALJ's decision. Accordingly, we affirm the decision.⁷

The entry is:

The administrative law judge's decision is affirmed.

⁷ In addition to her arguments regarding the underlying decree in this matter, Ms. Brown has also submitted the following motions: (1) Emergency Motion for Immediate Payment and Motion to Vacate Under Rules 23(G); (2) Emergency Motion to Enjoin Further Cost-Shifting to MaineCare and Medicare; and (3) Emergency Motion for Sanctions and Cease & Desist Order. The Appellate Division's authority is limited by statute to affirming, vacating, remanding or modifying a decree of an administrative law judge. 39-A M.R.S.A. § 321-B(3). Accordingly, the Appellate Division lacks the authority to act on the motions filed by Ms. Brown and will not address them in 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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