

DENISE J. ALLEN PARE
(Appellee)

v.

CENTRAL MAINE HEALTH
(Appellant)

and

FUTURECOMP
(Insurer)

Conference held: February 10, 2021
Decided: May 26, 2022

Panel Members: Administrative Law Judges Stovall, Chabot, and Pelletier
By: Administrative law Judge Stovall

[¶1] Central Maine Health (CMH) appeals from a decision of Workers' Compensation Board Administrative Law Judge (*Jerome, ALJ*) granting Denise Pare's Petition for Award and Petition for Medical and Related Services. The ALJ found that Ms. Pare sustained a work-related injury that aggravated a preexisting condition and the employment contributed significantly to her disability. *See* 39-A M.R.S.A. § 201(4). Ms. Pare was awarded ongoing total lost wage benefits from May 29, 2018.

[¶2] CMH contends that the ALJ erred (1) by accepting the opinion of a doctor who relied primarily on Ms. Pare's representations when the ALJ also found her recollections inconsistent with the existing medical records; (2) in finding that Ms. Pare met her burden of proving the occurrence of a work-related

injury when she had experienced identical symptoms for years before the alleged work-related injury; and (3) in finding Ms. Pare totally incapacitated when she was able to work after her injury, left work for unrelated reasons, and her condition was improving. We disagree with these contentions and affirm the ALJ's decision.

I. BACKGROUND

[¶3] Denise Pare sustained a compensable injury on November 5, 2014, while working as a certified nursing assistant for CMH, when she lifted a heavy patient and immediately felt pain in her neck, left arm, and hand. She suffered from a preexisting degenerative condition in her neck and thoracic outlet syndrome (TOS). Although Ms. Pare continued to experience effects from her work injury, she remained with CMH until 2017, when she left for reasons unrelated to her injury. She underwent the first of two surgeries to address the TOC on May 29, 2018.

[¶4] Ms. Pare filed her petitions in 2017 and 2019, seeking payment of related medical bills and ongoing total incapacity benefits from the date of her first surgery. Hearings were held on two dates. The ALJ found Ms. Pare's testimony as to the duration of her work injury credible and the expert opinion of Dr. Donahue, Ms. Pare's surgeon and an expert on TOS, more persuasive than CMH's selected medical expert, Dr. Omsberg. The ALJ found and concluded that Ms. Pare sustained a work injury that aggravated her preexisting condition, and that the

employment contributed to her ongoing disability in a significant manner. 39-A M.R.S.A. § 201(4). Ms. Pare was awarded total lost wage benefits from May 29, 2018, and ongoing.

[¶5] CMH filed a Motion for Findings of Fact and Conclusions of Law pursuant to 39-A M.R.S.A. § 318, which the ALJ denied. CMH appeals.

II. DISCUSSION

A. Standard of Review

[¶6] 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).

[¶7] When a party requests and proposes additional findings of fact and conclusions of law, as was done in this case, “we 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). In addition, the Appellate Division will not disturb a factual finding made by the ALJ absent a showing that it lacks competent evidence to support it. *Dunkin Donuts of Am., Inc. v. Watson*, 366 A.2d 1121, 1125 (Me. 1976).

B. Dr. Donohue's Opinion

[¶8] CMH first asserts that the ALJ erred when crediting Dr. Donahue's medical opinion because his testimony established that he had relied primarily on the history provided to him by Ms. Pare in forming his opinion, when the ALJ also found Ms. Pare's recollections regarding her medical history to be inconsistent with the medical records. This argument misstates Dr. Donahue's testimony. Dr. Donahue did not testify that he relied primarily on Ms. Pare's recited history to determine causation. He was asked and answered:

Q. So is it fair to say then that your opinions on causation or how her condition developed and may or may not have been aggravated are only sort of as good as the history that's been provided to you?

A. Um, I would say it's only as good as the history *but it's all of the history*. I mean, I don't discount the other records and other doctor's opinions. But *in terms of trying to make a diagnosis of TOS*, I think the patient's account of their symptoms is more helpful to me than most other information.

(Emphasis added).

[¶9] “The issue of causal connection between employment activity and disability is one of fact.” *Bryant v. Masters Machine Co.*, 444 A.2d 329, 333 (Me. 1982) (citing *Bruton v. City of Bath*, 432 A.2d 390, 392 (Me. 1981); *Rowe v. Bath Iron Works Corp.*, 428 A.2d 71, 73 (Me. 1981)). The ALJ's determination that there is a causal connection between Ms. Pare's employment at CMH and her disability is not undermined by Dr. Donohue's reliance on the medical history she

provided. Moreover, to the extent the ALJ found inconsistencies in Ms. Pare's recollections, the ALJ relied on the medical records. The ALJ's findings in this regard are supported by competent evidence and not subject to appeal.

C. Burden of Proof

[¶10] Next, CMH contends that Ms. Pare had identical symptoms for years before she asserted a work injury and therefore failed to meet her burden of proving the occurrence of a work-related injury. This contention lacks merit.

[¶11] An employee's condition does not have to be asymptomatic to sustain a subsequent work-related injury. "It is settled law in Maine that an employee need not prove that a personal injury arising out of and in the course of his employment constituted the sole cause of his ultimate disability." *Richardson v. Robbins Lumber, Inc.*, 379 A.2d 380, 382 (Me. 1977) (citing *MacLeod v. Great N. Paper Co.*, 268 A.2d 488, 489 (Me. 1970)). The Law Court has stated:

An employee is, of course, entitled to compensation for a disability proximately caused by his employment regardless of whether his condition at the time of injury was average or subnormal. Thus, a work injury that aggravates a pre-existing condition is compensable even though a physically normal employee would have been unaffected, provided the injury occurs under conditions that would otherwise entitle the employee to compensation.

Barrett v. Herbert Eng'g, Inc., 371 A.2d 633, 636 (Me. 1977) (quoting *Canning v. State Dep't of Transp.*, 347 A.2d 605, 609 (Me. 1975)).

[¶12] Ms. Pare testified that she experienced a “pop” in her neck and felt radiating pain in conjunction with lifting a patient at work. Dr. Donohue testified that her symptoms were different after her injury than before her injury. He testified in part:

The difference is in the localization of the symptoms down the upper extremity. These symptoms are in the first two fingers, which it’s unclear if Dr. Thorpe meant the first two digits, meaning the thumb and index finger, versus the first two fingers, which would be the index and middle finger. Whereas those would localize to either the upper trunk of the brachial plexus or a combined upper and middle trunk of the brachial plexus. When she saw me, her symptoms were more localized to the lower trunk of the brachial plexus, the fourth and fifth digits.

[¶13] The ALJ did not err when determining that Ms. Pare met her burden of proof that she sustained a work injury, despite experiencing symptoms before that injury.

D. Award of Total Wage Loss Benefits

[¶14] CMH finally contends that the ALJ erred in awarding Ms. Pare total wage loss benefits when she was able to work after her injury, she left work for reasons unrelated to the injury, and had experienced an improvement in symptoms after the surgery. We disagree.

[¶15] Ms. Pare underwent surgery for her work-related, aggravated TOS after she left employment with CMH, and her claim for benefits extends back only to the date of her first surgery. Moreover, Dr. Donahue testified her recovery from

surgery was ongoing, that she was still quite symptomatic, and that he would advise against a return to work. He further recommended that she undergo a functional capacity evaluation, and no such evaluation had occurred before the close of evidence. Accordingly, the award of total incapacity benefits has support in the evidentiary record.

III. CONCLUSION

[¶16] We find that the ALJ's factual findings are supported by competent evidence, 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. We therefore affirm the decision

The entry is:

The administrative law judge'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.

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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