

DONALD MARTIN
(Appellant)

v.

SCOTT PAPER CO.
(Appellee)

and

SENTRY INSURANCE
(Insurer)

Argued: July 19, 2017
Decided: January 26, 2018

PANEL MEMBERS: Administrative Law Judges Knopf, Goodnough, and Hirtle
BY: Administrative Law Judge Goodnough

[¶1] Donald Martin appeals from a decision of a Workers' Compensation Board administrative law judge (*Elwin, ALJ*), denying his Petition for Restoration relative to an established 1977 left eye injury. Mr. Martin argues that the ALJ erred by denying his claim on res judicata grounds without first determining whether he had shown a change of economic circumstances. We disagree and affirm the ALJ's decision.

I. BACKGROUND

[¶2] Donald Martin sustained an injury to his left eye in 1977 while working for Scott Paper Company. Pursuant to a 1978 decree from the Workers' Compensation Commission, he received total incapacity benefits until 1980, when

the Commission determined that he had regained a full work capacity despite minor lingering eye problems.¹ The Commission also found that although Mr. Martin made a reasonable effort to obtain employment, his failure to find work was because of general economic conditions as opposed to any work limitations attributable to his eye injury. Mr. Martin appealed that decision to the Law Court, but did not contest the Commission's finding that Mr. Martin had regained "full capacity for work." *See Martin v. Scott Paper Co.*, 434 A.2d 514, 516 (Me. 1981).

[¶3] Mr. Martin's left eye injury became the subject of litigation four more times over the ensuing ten years. In each round of litigation, Mr. Martin argued that he was entitled to ongoing incapacity benefits even though the medical evidence consistently showed no change in his medical condition since the 1980 decree. In 1991, in response to one of Mr. Martin's petitions, the Commission found that: "There is nothing any different in the evidence he is presenting now than that he has presented before. . . . The employee's restrictions [related to the

¹ Those problems, described generally in the 1981 Law Court decision, as well as in more detail in the Commission's 1982 decree, relate to excessive tearing and light sensitivity. In 1982, the Commission described the employee's claimed disability as follows:

[T]he Commission finds that the employee is not disabled in a work capacity sense. In his own testimony he stated that he was bothered by wind, dust and light, however, he complained almost as much about troubles with his good eye which was unaffected by the original injury as was his bad eye.

Furthermore, although his vision is impaired the impairment is relatively slight. One of his eyes is nearly normal and the other is correctable to nearly normal.

. . . It is a specific finding in this case that there is no disability due to a work-related injury and there is no causal relation between any work-related incident and any current disability.

Martin v. Scott Paper Co., W.C.C. 77-04-39-45D at 2 (Me. 1982).

left eye] remain basically the same as they have been in the past.” The Commissioner thus denied Mr. Martin’s request for incapacity benefits.

[¶4] Mr. Martin appealed the Commission’s decision to the Appellate Division. The Division affirmed, stating that:

The employee has argued that the Commission did not allow him to present evidence of a change in economic circumstances to support his claim. In this case such an opportunity was not required. . . . Mr. Martin had been found to be fully capable of earning at his pre-injury level in the earlier litigation. He testified in the present case that his restrictions are no different than they have been for the last ten years. Regardless of changes in the economy, if there is no physical change from a condition which yields actual, full earning capacity, there is no change of circumstances which could support the granting of a petition for restoration.

Martin v. Scott Paper Co., Me. W.C.C. 244, 247 (Me. App. Div. 1993) (citations omitted).

[¶5] Mr. Martin thereafter found full-time employment with the State of Maine, where he worked until 2009. He has been unemployed since that time.

[¶6] In 2015, Mr. Martin filed a Petition for Restoration. Mr. Martin described his eye condition as being essentially the same as what it had been in 1991. Nevertheless, he argued that he could overcome the res judicata effect of the prior decrees by proving a change in economic circumstances, without showing a medical change. He argued that his long period of unemployment after 2009, vocational rehabilitation efforts, and work search were sufficient to prove the economic change necessary to justify a reexamination of his ability to earn on that

basis. Mr. Martin argued that the same minor eye impairment, when combined with his present inability to find work, warranted a finding of at least a partial incapacity.

[¶7] The ALJ allowed testimony at the hearing concerning Mr. Martin's alleged change in economic circumstances. However, she declined to address that evidence in her decision. Rather, she focused on Mr. Martin's failure to present comparative medical evidence. She agreed that comparative medical evidence was not always required when a party can demonstrate an economic change in circumstances. However, she concluded that, in Mr. Martin's case, comparative medical evidence was essential to overcome the res judicata effect of the prior determination because the basis for the 1991 decision was the Commission's finding that Mr. Martin's injury did not limit his ability to work.

[¶8] The ALJ therefore denied Mr. Martin's Petition for Restoration. Mr. Martin filed a Motion for Further Findings of Fact and Conclusions of Law, which the ALJ summarily denied. This appeal followed.

II. DISCUSSION

A. Standard of Review

[¶9] 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).

[¶10] 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.*, 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. *See Dunkin Donuts of Am., Inc. v. Watson*, 366 A.2d 1121, 1125 (Me. 1976).

B. Res Judicata

[¶11] “[V]alid and final decisions of the Workers’ Compensation Board are subject to the general rules of res judicata and issue preclusion, not merely with respect to the decision’s ultimate result, but with respect to all factual findings and legal conclusions that form the basis of that decision.” *Grubb v. S.D. Warren Co.*, 2003 ME 139, ¶ 9, 837 A.2d 117 (citations omitted). In order to increase or decrease the benefit level set by a previous decision, the petitioning party must first show a “change of circumstances.” *Id.* at ¶ 7. “The purpose of the [changed circumstances] rule is ‘to prevent the use of one set of facts to reach different conclusions.’” *McIntyre v. Great N. Paper, Inc.*, 2000 ME 6, ¶ 5, 743 A.2d 744

(quoting *Folsom v. New England Tel. & Tel. Co.*, 606 A.2d 1035, 1038 (Me. 1992)).

[¶12] Ordinarily, evidence of a change of circumstances can take the form of either “comparative medical evidence,” or evidence of changed economic circumstances. *Grubb*, 2003 ME 139, ¶ 7. However, in determining what would constitute a change of circumstances, an ALJ must “determine the basis on which the previous award has been made.” *McIntyre*, 2000 ME 6, ¶ 6.

[¶13] In this case, the ALJ determined the basis of the Commission’s 1991 decree as being the Commissioner’s finding that, though the effects of his eye injury continued, they were not so severe as to limit his ability to work. Thus, only proof that his eye condition had become more limiting would suffice as proof of the kind of change of circumstances justifying reinstatement of incapacity benefits. Mr. Martin, however, did not present evidence that his eye condition had worsened. Instead, he offered the same argument that the Commission rejected in 1991: that despite the absence of a medical change of circumstances, his economic circumstances had changed and an award could be made on that basis.

[¶14] The ALJ concluded that because Mr. Martin presented no comparative medical evidence that might serve to alter the actual basis for the prior decision, he could not overcome its *res judicata* effect. In so doing, the ALJ

correctly applied *McIntyre* and principles of res judicata. Her decision does not involve a misapplication or misconception of the law.

III. CONCLUSION

[¶15] The ALJ determined that the 1991 decree was based on the Commission's factual finding that the lasting effects of Mr. Martin's eye injury were not such that they would impair his ability to earn. Because Mr. Martin failed to produce comparative medical evidence that his eye condition had changed, the ALJ correctly concluded that he had not overcome the res judicata effect of the prior determination.

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. 2016).

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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