

ISRAEL ORIOL
(Appellant)

v.

PORTLAND HOUSING AUTHORITY
(Appellee)

and

MEMIC
(Insurer)

Argued: March 19, 2014
Decided: December 24, 2014

PANEL MEMBERS: Hearing Officers: Jerome, Goodnough, and Stovall
BY: Hearing Officer Jerome

[¶1] Israel Oriol appeals from a decision of a Workers' Compensation Board Hearing Officer (*Collier, HO*) denying his Petition for Award in part as it relates to alleged injuries to his low back, cervical spine, and left wrist incurred on December 9, 2009.¹ When denying the petition, the hearing officer relied on the opinion of Dr. Bradford, the independent medical examiner (IME), regarding causation. *See* 39-A M.R.S.A. § 312(7) (Supp. 2013). Mr. Oriol contends it was error to adopt that opinion because the IME applied an incorrect legal standard when determining that the ongoing symptoms were not caused by the employment. We disagree, and affirm the hearing officer's decision.

¹ The hearing officer also granted the petition in part, awarding the protection of the Workers' Compensation Act for a work-related aggravation of Mr. Oriol's abdominal hernia condition incurred on December 9, 2009.

I. BACKGROUND

[¶2] Israel Oriol was hired as a temporary maintenance worker by the Portland Housing Authority and assigned to work at the Franklin Towers apartments in August of 2009. Prior to going to work for the Housing Authority, Mr. Oriol had suffered significant injuries to his low back, left wrist, and right foot in 2007, when he fell fifteen feet from a roof while working as a self-employed contractor. Mr. Oriol's back pain continued after he began working for the Housing Authority.

[¶3] On December 9, 2009, a pick-up truck travelling at a low rate of speed slid onto the sidewalk near Franklin Towers where Mr. Oriol was shoveling snow. The truck hit Mr. Oriol on the left side of his back and buttocks and knocked him to his hands and knees. He immediately complained of left low back and hip pain and was assessed with a muscle strain of those areas at the emergency room. He complained of left wrist pain the following day. Several weeks later, Mr. Oriol complained of increased abdominal pain related to a preexisting umbilical hernia. He underwent surgery for the hernia, and was out of work for a period of time following that surgery.

[¶4] Mr. Oriol filed a Petition for Award, seeking compensation for all injuries related to the truck accident. The hearing officer found that the preexisting abdominal hernia had been significantly aggravated by the December

9, 2009, truck accident, and awarded a closed-end period of incapacity benefits for that injury. *See* 39-A M.R.S.A. § 201(4) (2001). The hearing officer rejected Mr. Oriol’s claim, however, that his ongoing low back, neck, and left wrist problems were causally connected to the incident on December 9, 2009. The hearing officer relied upon the report and deposition testimony of Dr. Bradford in reaching this conclusion.

[¶5] Mr. Oriol filed a motion for additional findings of fact and conclusions of law, which the hearing officer denied. He then filed this appeal.

II. DISCUSSION

[¶6] The Appellate Division’s role on appeal is “limited to assuring that the [hearing officer’s] factual 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.” *Pomerleau v. United Parcel Serv.*, 464 A. 2d 206, 209 (Me. 1983).

[¶7] Mr. Oriol contends that the hearing officer erred when adopting the IME’s causation opinion with respect to his back, neck, and left wrist because the IME held Mr. Oriol to too high a standard of proof. He asserts the hearing officer, by means of adopting the IME’s medical findings, required that he establish a “direct connection” or “direct link” from the events of December 9, 2009, to his

ongoing incapacity, rather than merely establishing causation on a more probable than not basis.

[¶8] We agree that Mr. Oriol's burden was to establish that his ongoing symptoms were more probably than not caused by the work incident, *see Bisco v. S.D. Warren Co.*, 2006 ME 117, ¶ 13, 908 A.2d 625, 629, and that Dr. Bradford created some ambiguity with certain answers to questions at his deposition. However, we disagree that the hearing officer committed legal error when adopting Dr. Bradford's findings as expressed in the written report.

[¶9] In his report issued pursuant to section 312, Dr. Bradford rejected the claim that Mr. Oriol suffered ongoing low back, neck, or left wrist problems related to the December 9, 2009, work injury. His written report referred to the "paucity of findings on physical examination," "significant symptom magnification," and "global mild numbness in the left lower extremity [that was] simply nonanatomic and simply not explicable on the basis of any of his trauma." Dr. Bradford further opined that "there were a number of inconsistencies on physical examination which would make a conclusion regarding low back strain highly tenuous. With respect to the low back, I would have a very difficult time concluding that he has had a significant injury which is still persisting at this time." Dr. Bradford concluded that it was "possible" but not convincing that Mr. Oriol had ongoing lumbar strain related to the work injury.

[¶10] Dr. Bradford noted that Mr. Oriol's complaints regarding his left wrist were not supported by findings on physical examination, and that there was significant symptom magnification with regard to the wrist as well. He further found no convincing evidence of ongoing injury to the cervical spine related to the incident at work.

[¶11] Dr. Bradford was deposed at length concerning the standard that he had applied in coming to his conclusion regarding the lack of any ongoing causal link between Mr. Oriol's low back, neck, and wrist problems and the work injury. The hearing officer noted that the definitive statements in Dr. Bradford's report that rejected any significant aggravation of his pre-existing low back, neck and wrist problems were clouded by some contradictory testimony in the deposition, specifically with respect to his chronic pain.

[¶12] The hearing officer evaluated those statements in the context of the deposition as a whole and concluded that Dr. Bradford did not fundamentally vary the medical opinions expressed in his written report, and that consequently, Mr. Oriol had not met his burden of proof on the issue of ongoing causation. When presented with potentially inconsistent statements in a medical deposition, it is incumbent on the hearing officer to consider the larger context in which those statements are offered to construe the intent of the examining physician. In this

case, it is clear that Dr. Bradford had clearly expressed significant doubt about any ongoing causal connection between Mr. Oriol's chronic pain and his work injury.

[¶13] We conclude that the hearing officer's findings with respect to the issue of ongoing causation are supported by competent evidence in the record, and that the hearing officer neither misconceived nor misapplied the law when adopting Dr. Bradford's opinion. His assessment of Dr. Bradford's medical findings in the context of the report and the deposition as a whole was neither arbitrary nor without rational foundation.

III. CONCLUSION

The entry is:

The hearing officer'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. 2013).

Attorneys for Appellant:
James J. MacAdam, Esq.
Nathan A. Jury, Esq.
David E. Hirtle, Esq.
MacADAM JURY
208 Fore Street
Portland, ME 04101

Attorney for Appellee:
Dana Gillespie Herzer, Esq.
MEMIC
P.O. Box 3606
Portland, ME 04104