WILLIAM M. HAVEY II
(Appellant)

v.

MAINE ADMINISTRATIVE & FINANCIAL SERVICES
(Appellee)

and

STATE OF MAINE WORKERS' COMPENSATION DIVISION
(Insurer)

Conference held: August 20, 2020
Decided: December 20, 2021

PANEL MEMBERS: Administrative Law Judges Stovall, Chabot and Pelletier
BY: Administrative Law Judge Chabot

[¶1] William Havey appeals from a decision of a Workers' Compensation Board administrative law judge (*Knopf, ALJ*) granting in part his Petition for Award of Compensation and Petition for Payment of Medical and Related Services. Mr. Havey contends that the ALJ erred (1) by apportioning responsibility between a work injury and a nonwork-related injury and reducing the award accordingly, citing *Roy v. Bath Iron Works*, 2008 ME 94, 952 A.2d 965; and (2) by making him personally liable for medical expenses made necessary by the work-related injury, citing 39-A M.R.S.A. § 206(13) (Pamph. 2020). We vacate the decision and remand for further proceedings.

I. BACKGROUND

[¶2] William Havey sustained a work-related left ankle and foot injury on June 16, 2006, while employed by the State of Maine. As a result of the injury, Mr. Havey underwent three surgeries to treat a left ankle avulsion fracture. At the time of the hearing in February 2019, he continued to take hydrocodone and methadone for pain management. At some point he developed and treated for nonwork-related bilateral knee problems, and he ultimately underwent bilateral knee replacements, the first of which occurred in March 2017. Initially, Mr. Havey's pain medication increased as a result of the knee replacements, but at the time of the decree in October 2019 the pain medication had been reduced to the same or lower level to that before the knee replacement surgeries. Mr. Havey is being seen by physicians at Maine General Physiatry who manage his prescription pain medication for both his ankle and knee conditions.

[¶3] Mr. Havey filed petitions alleging that the State was 100% responsible for his medical treatment related to the left foot and ankle injury, including his medication and doctor's visits. He also alleged that the State was responsible for varying partial rates of incapacity benefits as a result of his lost time from work for attending medical appointments related to his work injury. He did not seek payment for the increase in medication that resulted from the knee replacements.

[¶4] Dr. Matthew Donovan performed an independent medical examination pursuant to 39-A M.R.S.A. § 312 (Pamph. 2020). The report concluded, in relevant part:

> Subjectively, the latest records reviewed do indicate a most probable causal connection between the symptomatic non-work related knee conditions and the need for ongoing opioid/narcotic usage . . . the foot condition is also associated with [the] need for ongoing use of these opioid/narcotic pain medicines. I would apportion 85% to the nonwork related conditions and 15% to the work related foot and ankle conditions.

[¶5] The ALJ granted Mr. Havey's petitions in part, finding that he sustained a work-related left ankle and foot injury on June 16, 2006, but adopting Dr. Donovan's opinion and concluding that the State was responsible for only 15% of Mr. Havey's treatment costs, including medical visits and the cost of medication. The ALJ declined to award varying rates partial incapacity benefits for Mr. Havey's claimed lost time, finding no factual support in the record for such an award.

[¶6] Mr. Havey filed a Motion for Further Findings of Fact and Conclusions of Law, which the ALJ granted in part, issuing additional findings that did not change the outcome of her decision. In the amended decree, the ALJ specifically rejected Mr. Havey's argument that because title 22 M.R.S.A. § 2210(1)(C) required monthly office visits for narcotic medication management, those visits should be fully compensated. Mr. Havey appeals.

II. DISCUSSION

A. Standard of Review

[¶7] The Appellate Division's role on appeal is "limited to assuring that the [ALJ'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." *Moore v. Pratt & Whitney Aircraft*, 669 A.2d 156, 158 (Me. 1995). When a party requests and proposes additional findings of fact and conclusions of law, as was done in this case, the Appellate Division reviews "only the factual findings actually made and the legal standards actually applied" by the ALJ. *Daley v. Spinnnaker Indus., Inc.*, 2002 ME 134, ¶ 17, 803 A.2d 446 (quotation marks omitted). The failure to issue findings in support of a decision that are adequate for appellate review may require remand from the Appellate Division. *See Cote v. Town of Millinocket*, 444 A.2d 355, 359, n.5 (Me. 1982) ("The Commissioner's failure to articulate a basis for his failure to make findings when proposed findings are submitted will in most instances result in a remand of the action to the Commission.").

B. Analysis

[¶8] There are several provisions by which the Workers' Compensation Act allocates responsibility for compensating injured workers who suffer multiple occupational and non-occupational injuries, including by apportionment. *See*

Legassie v. Securitas, 2008 ME 43, ¶ 14, 944 A.2d 495 (overruled in part by statute on other grounds).[1] Although she did not explicitly cite to the statute, when adopting the IME's opinion and reducing the State's responsibility for medical treatment by a percentage amount for the knee condition, the ALJ appears to have apportioned responsibility consistent with 39-A M.R.S.A. § 354 (Pamph. 2020). However, section 354, applies only "[w]hen 2 or more occupational injuries occur . . . that combine to produce a single incapacitating condition and more than one insurer is responsible for that condition." Because there is only one occupational injury in this case—the foot and ankle injury—the ALJ erred when she apportioned liability in that manner.

[¶9] Mr. Havey asserts that his knee condition is a subsequent nonwork injury, and the State's liability should have been analyzed pursuant to section 201(5). He contends that this case is analogous to *Roy v. Bath Iron Works*, 2008 ME 94, 952 A.2d 965, in which the Law Court held that a subsequent nonwork injury should have no effect on the level of benefits awarded for a work injury. Mr. Havey also argues that the practical effect of the ALJ's apportionment award violates 39-A

[1] In addition to the apportionment provision in 39-A M.R.S.A. § 354, these include but are not limited to: (1); the offset provision in 39-A M.R.S.A. § 221 (Pamph. 2020); (2) a reduction of the portion of incapacity attributable to subsequent nonwork injuries pursuant to 39-A M.R.S. § 201(5) (Pamph. 2020); (3) an apportionment to apply the law in effect at the time of an injury occurring prior to 1993 pursuant to 39-A M.R.S. § 201(6) (Pamph. 2020); and (4) a lien against third-party recoveries in the amount of benefits due pursuant to 39-A M.R.S. § 107 (Pamph. 2020). *See Legassie*, 2008 ME 43, ¶¶ 13-14.

M.R.S.A. § 206(13), by requiring Mr. Havey to be personally liable for medical costs related to his work injury.

[¶10] In the amended decision, the ALJ found that Mr. Havey began treating for his knee problems in 2011. She also appears to have adopted Dr. Donovan's medical findings regarding the knee and ankle conditions. Dr. Donovan's report states: "Of note there is record of painful preexisting foot and knee conditions in the year 2005." On appeal, looking only at the factual findings made and without searching the evidentiary record, *Daley*, 2002 ME 134, ¶ 17, 803 A.2d 446, we are unable to determine whether the ALJ considered Mr. Havey's knee injury to be a subsequent nonwork injury. *See Spear v. Town of Wells*, 2007 ME 54, ¶ 13, 922 A.2d 474.

[¶11] Because the ALJ applied an incorrect legal standard when establishing the level of compensation for the ankle injury and did not make clear findings that are adequate for appellate review regarding the nature of the knee injury in relation to the foot and ankle injury, we vacate the decision and remand with instructions for the ALJ to decide the level of compensation to which Mr. Havey is entitled, including issuing findings on whether the bilateral knee condition is a subsequent nonwork injury. *See Cote*, 444 A.2d at 359, n.5. If the ALJ so finds, then the analysis is governed by 39-A M.R.S.A. § 201(5), which "requires the [ALJ] to separate out the effects of the subsequent nonwork-injury in calculating the amount of benefits,"

and to view the physical limitations from the work injury in isolation to determine the amount of benefits to be awarded. *Pratt v. Fraser Paper, Ltd.*, 2001 ME 102, ¶ 12, 774 A.2d 351; *Roy,* 2008 ME 94, ¶ 15, 952 A.2d 965. This process does not involve apportioning the disability between the work and nonwork-related injuries. *Pratt,* 2001 ME 102, ¶ 12.

The entry is:

> The administrative law judge's decision is vacated, and the case remanded for proceedings consistent with 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 (Supp. 2020).

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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