

STATE OF MAINE
WORKERS' COMPENSATION BOARD

APPELLATE DIVISION
Case No. App. Div. 18-0050
Decision No. 20-07

HILDA NADEAU
(Widow of Employee Larry Nadeau/Appellant)

v.

MAINE BUREAU OF PARKS AND RECREATION
(Appellee)

and

STATE OF MAINE WORKERS' COMPENSATION DIVISION
(Insurer)

Conference held: June 12, 2019
Decided: February 20, 2020

PANEL MEMBERS: Administrative Law Judges Elwin, Collier, and Stovall
BY: Administrative Law Judge Elwin

[¶1] Hilda Nadeau, widow of employee Larry Nadeau, appeals from a decision of a Workers' Compensation Board administrative law judge (*Hirtle, ALJ*) denying Ms. Nadeau's Petition for Award—Fatal. Ms. Nadeau contends that the ALJ erred when determining that the Maine Bureau of Parks and Recreation (the Bureau) rebutted the presumption in 39-A M.R.S.A. § 327 (Supp. 2018), and by failing to acknowledge the res judicata effect of earlier board decrees. We affirm the decision.

I. BACKGROUND

[¶2] In a 2003 decree, a board hearing officer (*Pelletier, HO*) established that Larry Nadeau sustained a work-related low back injury in 1992 and that he suffered from depression as a result of that work injury. He awarded Mr. Nadeau ongoing partial incapacity benefits. The hearing officer further established in a 2010 decree

that Mr. Nadeau continued to experience low back symptoms as a result of the 1992 injury, and that his depression had worsened, resulting in suicidal ideations and a period of psychiatric hospitalization in 2008. The hearing officer awarded Mr. Nadeau total incapacity benefits.

[¶3] Medical records from early in 2016 show that Mr. Nadeau's psychological condition had greatly improved, to the extent that his depressive disorder was in partial remission without suicidal ideations or psychosis, although he continued to suffer from chronic back pain that contributed to incomplete resolution of psychological symptoms. Mr. Nadeau experienced other sources of stress at that time, including his son's divorce and custody battle, an issue regarding the legality of his long-term marriage, and a property dispute with a neighbor to which the police had been called numerous times.

[¶4] On May 5, 2016, Mr. Nadeau died by suicide. He had risen and dressed earlier than his usual time. He mentioned to his wife that he thought she was going to call an ambulance for him. While she prepared to take him to the hospital, Mr. Nadeau went to his truck, removed his gun from its holster, then shot and killed himself near their home.

[¶5] Ms. Nadeau filed this Petition for Award—Fatal, seeking benefits pursuant to 39-A M.R.S.A. §§ 215 and 216 (Supp. 2018). The board held a hearing on March 12, 2018, at which the ALJ (*Hirtle, ALJ*) applied the evidentiary

presumption in 39-A M.R.S.A. § 327 (Supp. 2018), placing on the Bureau the burden to disprove the presumed facts listed in the provision—including that the death arose out of and in the course of employment—on a more probable than not basis. *See Lavalle v. Town of Bridgton*, Me. W.C.B. No. 15-13, ¶ 13 (App. Div. 2015). The ALJ concluded that the Bureau met that burden and denied the Petition.

[¶6] Ms. Nadeau filed a Motion for Findings of Fact and Conclusions of Law, which the ALJ denied. Ms. Nadeau then filed this appeal.

II. DISCUSSION

A. Standard of Review

[¶7] The Appellate Division’s role on appeal “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.” *Pomerleau v. United Parcel Serv.*, 464 A.2d 206, 209 (Me. 1983) (quotation marks omitted). 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).

B. The Section 327 Presumption

[¶8] Title 39-A M.R.S.A. § 327 provides:

In any claim for compensation, when the employee has been killed or is physically or mentally unable to testify, there is a rebuttable presumption that the employee received a personal injury arising out of and in the course of employment, that sufficient notice of the injury has been given and that the injury or death was not occasioned by the willful intention of the employee to injure or kill the employee or another.

[¶9] The parties do not contest the ALJ's conclusion that the presumption may apply pursuant to *Toomey v. City of Portland*, 391 A.2d 325, 331-32 (Me. 1978), despite that Mr. Nadeau's death was by suicide. See *Perreault v. Van Buren Community Hosp.*, Me. W.C.C. 3488, 3490 (Me. App. Div. 1989) ("[I]f an injury caused a mental disease or defect which is in turn responsible for the employee's impulse to take his own life, and so far impaired the ability to resist that impulse that the decedent is in fact unable to control it, the suicide cannot be termed willful under the Act."); *Lessard v. Sanborn's Motor Express*, Me. W.C.C. 3870, 3872 (Me. App. Div. 1989) (same). Nor do they contest that pursuant to the presumption, the Bureau had the burden to disprove the presumed fact that Mr. Nadeau's suicide arose out and in the course of employment. *Lavalle*, ¶ 13. The issue is whether the ALJ erred when determining that the Bureau met that burden, specifically on the issue of whether the work injury was a contributing cause to Mr. Nadeau's death. Ms. Nadeau contends that twenty-plus years of depression due to work-related chronic

pain cannot be excluded as a contributing cause, and that other potential sources of stress were minor in comparison.

[¶10] When evaluating whether the Bureau met its burden, the ALJ mainly considered two medical opinions and medical records from the months leading up to Mr. Nadeau’s death. Dr. Carlyle Voss, a psychiatrist employed by Ms. Nadeau, opined that Mr. Nadeau experienced severe chronic depression related to chronic pain and his inability to continue working, and that “Mr. Nadeau’s judgment, insight, [and] emotional regulation, were severely impaired due to the effects of his depression disorder on his mental functioning.” In Dr. Voss’s medical judgment, there were no other significant contributing factors to Mr. Nadeau’s death, other than the work-related injury.

[¶11] Dr. Robert Gallon, Ph.D., a psychologist hired by the Bureau, noted that although Mr. Nadeau suffered from depression from at least 2000, and had frequent suicidal thoughts, he had made no attempts or gestures over the course of sixteen years. Based on medical records from the months leading up to Mr. Nadeau’s death, Dr. Gallon opined that Mr. Nadeau’s long-standing depression related to his medical condition had eased considerably, and that it was highly unlikely that his work-related chronic pain condition and resulting depression contributed to his death.

[¶12] Based on Dr. Gallon’s opinion, medical records from the period leading up to Mr. Nadeau’s death, and evidence of other sources of stress in his life—including the property line dispute with his neighbor, the issue regarding his marriage, and his son’s divorce—the ALJ was persuaded that the Bureau met the burden to disprove causation on a more probable than not basis. The ALJ gave less weight to Dr. Voss’s opinion because Dr. Voss did not consider that Mr. Nadeau’s depression had abated to a considerable degree in the period before the suicide, or that Mr. Nadeau was experiencing other stressful events in his life around that time.

[¶13] The ALJ’s findings related to causation have support in the record; it was therefore within the ALJ’s purview to be persuaded by that evidence. The ALJ did not err when determining that the Bureau met its burden in this case.

C. Res Judicata

[¶14] Ms. Nadeau contends that the ALJ was bound by the res judicata effect of the 2003 and 2010 decisions to find that Mr. Nadeau’s work-related depression contributed to his death by suicide. Ms. Nadeau asserts that the ALJ should have rejected Dr. Gallon’s opinion as inconsistent with the prior board decrees. We disagree.

[¶15] “[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). A party is precluded from relitigating an issue that has been (1) actually litigated, (2) determined by a final and valid judgment, and (3) the determination was essential to the judgment. *See Cline v. Me. Coast Nordic*, 1999 ME 72, ¶ 9, 728 A.2d 686.

[¶16] The hearing officer specifically found in 2003 that Mr. Nadeau suffered from depression that was causally connected to chronic pain from his work injury, and in 2010, that his work-related psychological condition had deteriorated to the point that he had become totally incapacitated. The ALJ was bound by these findings when deciding the current petition absent a showing of changed circumstances. *See Moore v. City of Portland*, 2004 ME 49, ¶ 10, 845 A.2d 1163; *Grubb*, 2003 ME 139, ¶ 9, 837 A.2d 117.

[¶17] However, at issue in this round of litigation was not whether Mr. Nadeau suffered from depression, but whether his work-related depression contributed to his decision to take his life. The ALJ’s decision—that the Bureau had disproved the presumed fact that the death arose out of and in the course of employment (i.e., that his work-related depression contributed to Mr. Nadeau’s death)—is based on evidence that Mr. Nadeau’s mental condition as it relates to the work injury had substantially improved, and that other sources of stress in his life at the relevant time were more likely contributing to his mental state. Dr. Voss, who

opined that the work-related condition caused the suicide, did not consider those other sources of stress.

[¶18] The prior finding that Mr. Nadeau suffered from work-related depression did not preclude the ALJ's determination in this round of litigation that the Bureau successfully disproved the presumed fact that Mr. Nadeau's work-related depression caused his death by suicide.

III. CONCLUSION

[¶19] The ALJ's decision that the Bureau disproved the presumed fact that Mr. Nadeau's death by suicide arose out of and in the course of employment has evidentiary support in the record, and we do not disturb it. The ALJ was not precluded by the doctrine of res judicata from determining that the Bureau disproved the presumed fact.

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 (Supp. 2018).

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.

Attorney for appellant:
Kevin M. Noonan, Esq.
McTEAGUE HIGBEE
P.O. Box 5000
Topsham, ME 04086-5000

Attorneys for appellee:
Anne-Marie Story, Esq.
John K. Hamer, Esq.
RUDMAN WINCHELL
P.O. Box 1401
Bangor, ME 04402-1401