

JANINE HILLEBRECHT THIBAUT
(Appellee)

v.

MERCY HOSPITAL.
(Appellant)

and

CROSS INSURANCE TPA, INC.
(Insurer)

Argued: September 30, 2021
Decided: January 10, 2022

PANEL MEMBERS: Administrative Law Judges Knopf, Pelletier, and Stovall
By: Administrative Law Judge Stovall

[¶1] Mercy Hospital (Mercy) appeals from a decision of a Workers' Compensation Board administrative law judge (*Collier, ALJ*) granting Janine Hillebrecht Thibault's Petition for Payment of Medical and Related Services. Mercy contends the ALJ erred when determining that clear and convincing contrary evidence in the record justified rejecting the independent medical examiner's (IME's) medical findings, and when deciding that the medical treatment to Ms. Thibault's low back, left leg, and left hip is compensable. We disagree and affirm the ALJ's decision.

I. BACKGROUND

[¶2] On February 19, 2018, while working for Mercy, Ms. Thibault sustained an injury when she slipped and fell on a wet floor. Mercy did not contest that Ms.

Thibault sustained an injury to her left shoulder; however, Mercy asserted that her low back and left leg problems were not work-related. The board (*Jerome, ALJ*) issued a decree on May 8, 2019, finding that Ms. Thibault sustained an injury to her left shoulder, low back, and left leg. The ALJ rejected the findings of the IME, Dr. Branch, on the issue of causation regarding Ms. Thibault's back condition, finding them "equivocal." *See* 39-A M.R.S.A. § 312 (Pamph. 2020). Dr. Branch wrote in his report of November 9, 2018:

Her current physical examination is inconsistent and accompanied by signs suggestive of nonorganic back pain in the setting of neurologic deficit and no functional impairment. I am concerned for underlying secondary gain at this point with regards to her back pain specifically.

[¶3] The ALJ instead adopted the opinion of Dr. Bean, that Ms. Thibault's low back and left leg problems resulted from the work injury, which aggravated a preexisting degenerative condition.

[¶4] On September 9, 2019, Ms. Thibault filed the current Petition for Payment of Medical and Related Services, concerning treatment for her low back, left leg, and left hip. On March 6, 2020, Dr. Branch performed a second independent medical examination of Ms. Thibault. Dr. Branch wrote in his report, "*Ms. Hillebrecht [Thibault]'s pain complaints have been migratory in nature since her reported work injury. I cannot assign causality at this time based upon the migratory nature of her pain complaints and the incomplete medical workup.*" (Emphasis added.)

His medical opinion was essentially the same as it was during his 2018 examination.

He further wrote:

I find the nature of her low back and left leg pain atypical and curious. I found several inconsistencies during this examination. In reviewing my prior section 312 examination, she presented very similarly. Other physicians and (sic) noted her muscle strength to be full and with good effort, but I have consistently found her to display give way weakness upon muscle testing amongst multiple findings of symptom magnification.

However, earlier in his same report, Dr. Branch wrote, “There is no evidence of symptom magnification.”

[¶5] The ALJ rejected Dr. Branch’s March 6, 2020, findings on causation, finding clear and convincing evidence contrary to those findings in the record. The ALJ further found that Dr. Branch’s findings were both inconsistent with findings in the prior decree and internally inconsistent. Mercy appeals, asserting that that it was error to reject the IME’s medical findings and that the evidence does not support a finding that the current problems are causally connected to the 2018 work injury.

II. DISCUSSION

[¶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] Title 39-A M.R.S.A. §312(7) provides:

The board shall adopt the medical findings of the independent medical examiner unless there is clear and convincing evidence to the contrary in the record that does not support the medical findings. Contrary evidence does not include medical evidence not considered by the independent medical examiner. The board shall state in writing the reasons for not accepting the medical findings of the independent medical examiner.

[¶8] When determining whether clear and convincing medical evidence contrary to the IME’s findings is present, we examine “whether the [ALJ] could reasonably have been persuaded that the required factual finding was or was not proved to be highly probable.” *Dubois v. Madison Paper Co.*, 2002 ME 1, ¶ 14, 795 A.2d 696 (quotation marks omitted). We must therefore “determine whether the [ALJ] could have been reasonably persuaded by the contrary medical evidence that it was highly probable that the record did not support the IME’s medical findings.” *Meade v. Southworth-Milton, Inc.*, Me. W.C.B. No. 13-2, ¶ 2 (App. Div. 2013) (quoting *Dubois*, 2002 ME 1, ¶ 14).

[¶9] Pursuant to 39-A M.R.S.A. § 312(7), when an IME’s opinion is rejected, the ALJ must explain the reasons for that rejection in writing. The ALJ, in this case, explained his reasons as follows:

Dr. Branch’s opinion, however, is inconsistent with the Board’s prior decision in this matter, which determined that Ms. Thibault’s low back and left leg condition was work-related. Dr. Branch does not conclude that Ms. Thibault’s work-related aggravation has resolved since the

prior decree. Rather, he concludes that he “cannot assign causality” for her low back and left leg pain, which he finds “atypical and curious” in nature. Not only does this opinion contradict the Board’s 2019 Decision, it is internally inconsistent. On page 12 Dr. Branch states: “There was no evidence of symptom magnification.” On page 13, however, he states that he made: “multiple findings of symptom magnification.” He also says that the physical findings were inconsistent among the “four different physicians (Drs. Bean, Pavlak, Perkowski, and Lee)” who evaluated her for low back and left leg symptoms. But Dr. Pavlak evaluated Ms. Thibault only once, for a nerve conduction study of her left arm. Dr. Perkowski and Dr. Lee specifically indicate that the ongoing low back and left leg and hip problems are work-related. On this record, I am persuaded that there is clear and convincing evidence to the contrary of Dr. Branch’s opinion on the issue of continuing causation for Ms. Thibault’s low back and left leg pain, and I conclude that her low back and left leg and hip problems continue to be causally connected to the February 19, 2018 fall at work.

[¶10] In light of the deference given to ALJ’s findings concerning credibility and factual medical issues, *see Dubois*, 2002 ME 1, ¶ 16, it is apparent that the ALJ could reasonably have been persuaded by the contrary evidence that it was highly probable that the IME was in error. The reasons given were sufficient to support the ALJ’s rejection of the IME’s medical findings.

[¶11] Moreover, competent evidence identified by the ALJ supports the finding that Ms. Thibault’s low back, left leg, and left hip problems continue to be causally connected to her February 19, 2018, work-related injury.

III. CONCLUSION

[¶12] The ALJ did not err in concluding there is clear and convincing evidence in the record sufficient to reject the IME’s medical findings and in

awarding payment of medical bills for treatment to Ms. Thibault's low back, left leg, and left hip injury. The ALJ's factual findings are supported by competent evidence, and his application of the law to those facts was neither arbitrary nor without a rational foundation.

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 (Pamph. 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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