

GABRIEL OROMO
(Appellant)

v.

ARAMARK FACILITY SERVICES, LLC
(Appellee)

and

SEDGWICK CLAIMS MANAGEMENT SERVICES
(Insurer)

Argued: January 26, 2015
Decided: March 25, 2015

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

[¶1] Gabriel Oromo appeals from a decision of a Workers' Compensation Board hearing officer (*Collier, HO*) granting in part his two Petitions for Award regarding two work-related injuries he experienced while performing housekeeping services for Aramark. The issues on appeal are (1) whether Mr. Oromo received adequate translation services during medical examinations and at his hearing; and (2) whether the hearing officer erred when finding that Mr. Oromo's work-related right wrist and left shoulder injuries had resolved as of November 25, 2011. We affirm the hearing officer's decision.

I. BACKGROUND

[¶2] Mr. Oromo worked for Aramark performing cleaning services. He suffered two compensable injuries while working there: to his right wrist on June 16, 2011, and to his left shoulder on August 25, 2011. Pursuant to an April 15, 2014, decision, the hearing officer awarded Mr. Oromo 100% partial incapacity benefits for the period August 25 through November 25, 2011, due to these work injuries.

[¶3] In his April 15, 2014, decision, the hearing officer adopted the opinion of Dr. Donovan, an orthopedic surgeon who performed an independent medical evaluation of Mr. Oromo pursuant to 39-A M.R.S.A. § 312 (Supp. 2014). Dr. Donovan concluded that Mr. Oromo sustained a work-related aggravation of his underlying right wrist condition (diagnosed as a torn cartilage) on June 16, 2011, and a work-related left shoulder injury (diagnosed as tendonitis) on August 25, 2011. While Mr. Oromo did suffer these two work-related injuries and was unable to work for a period of time, Dr. Donovan opined that the injuries resulted in no further work restrictions after November 25, 2011.

[¶4] The hearing officer adopted Dr. Donovan's medical findings pursuant to 39-A M.R.S.A. § 312(7), granted Mr. Oromo's Petitions for Award, and ordered a three-month period of 100% partial incapacity benefits. Mr. Oromo's appeal followed.

II. DISCUSSION

A. Translation Services

[¶5] On appeal, Mr. Oromo alleges that, as a Sudanese Arabic speaker, his medical examinations after his right wrist and his left shoulder injuries were unreliable because there was no translator present to assist with communication. He further contends that his hearing before the board was unfair due to the lack of appropriate translation services.

1. Translation at Medical Appointments

[¶6] With regard to the initial medical examination, the hearing officer found as fact that Mr. Oromo's brother was with him at the hospital to assist with language issues. Mr. Oromo contests this finding. He asserts that his brother dropped him off and picked him up from his initial appointment, but was not present during the appointments to assist with translation. However, Maine Medical Center records from June 16, 2011, indicate that during Mr. Oromo's examination, "Translation was obtained through a family member, the patient's brother, [who] has good command of English." In addition, records from Brighton FirstCare from August 25, 2011, also indicate that an interpreter was present at his examination. Because the hearing officer's finding that Mr. Oromo received language assistance at his appointments is supported by competent evidence, it

must be sustained. *See* 39-A M.R.S.A. § 321-B(2); *Pomerleau v. United Parcel Serv.*, 464 A.2d 206, 209 (Me. 1983).

[¶7] With respect to Concentra, records from July 1 and August 26, 2011, (Mr. Oromo’s first visits with Concentra P.A. DeCristoforo for his right wrist and left shoulder, respectively) specifically note that an interpreter was present at each of these appointments. In any event, the hearing officer accepted the favorable opinion of the Concentra physician who treated Mr. Oromo’s right wrist, Dr. Castorina, who opined that the triangular fibrocartilage tear seen on the MRI was work-related, and rejected Concentra P.A. DeCristoforo’s unfavorable opinion that the shoulder injury was not work-related. Therefore, even if Mr. Oromo’s contentions were taken as true, the error would have had no effect on the outcome of his case. *See Midland Fiberglass v. L.M. Smith Corp.*, 581 A.2d 402, 403-04 (Me. 1990) (holding that alleged “error should be treated as harmless if the appellate [body] believes it highly probable that the error did not affect the judgment” (quotation marks omitted)); *see also Cote v. Osteopathic Hosp. of Me., Inc.*, 432 A.2d 1301, 1307 (Me. 1981) (applying harmless error standard in workers’ compensation proceedings).

2. Translation at Hearing

[¶8] With regard to the April 1, 2014, hearing, translation services were provided by a duly sworn Arabic interpreter from Catholic Charities. Mr. Oromo

contends that the translation services were inadequate because the Arabic language interpreter did not speak Sudanese Arabic. In evaluating whether Mr. Oromo received adequate interpretive assistance, we recognize that:

An employee whose native language is not English and who does not understand the English language to the degree necessary to reasonably understand and participate in proceedings that affect the employee's rights is entitled to have an interpreter present at all proceedings before the board or a hearing officer relating to that employee's rights.

39-A M.R.S.A. § 329 (2001); *see also State v. Poblete*, 2010 ME 37, ¶ 27, 993 A.2d 1104 (applying 5 M.R.S.A. § 51 (2013) in a criminal proceeding).

[¶9] Mr. Oromo, however, did not object to the interpreter at the time of the hearing. Like other complaints about the conduct of a board hearing, such a challenge may be waived if it is not raised in a timely fashion, *see, e.g., Redman v. United States*, 616 A.2d 336, 338 (D.C. App. 1992), and we will vacate the decision only if the hearing officer made an obvious error as a matter of law that affected the employee's substantial rights,¹ *see Truman v. Browne*, 2001 ME 182, ¶ 12, 788 A.2d 168.

[¶10] Careful review of the hearing transcript does not disclose any obvious difficulties in communication at the hearing. And on appeal, Mr. Oromo does not identify any specific examples of miscommunication or incorrect translations of

¹ Although "obvious error" review of unpreserved errors is almost never applied in civil cases, *see DONALD G. ALEXANDER, MAINE APPELLATE PRACTICE*, § 403(a) (2013), we do so here because the lack of interpretation services at a hearing has the potential to implicate an employee's substantial right to a fair hearing. *Cf. Poblete*, 2010 ME 37, ¶ 27, 993 A.2d 1104.

what occurred at the hearing. Accordingly, there is no basis for concluding that the translation services were inadequate or that the hearing officer obviously erred in a manner that affected Mr. Oromo's substantial rights.

B. Medical Evidence

[¶11] Mr. Oromo next contends that the hearing officer's finding that his injury had resolved as of November 25, 2011, was not supported by competent medical evidence. Specifically, he asserts that Dr. Donovan's examination took place on February 22, 2013, yet the report lists an examination date of January 22, 2013. Furthermore, Mr. Oromo claims that after he went to Concentra (it is not clear at which appointment), the practitioner spoke on the phone to an employer representative, then accused Mr. Oromo of being a liar.

[¶12] These contentions, however, do not provide a basis for us to sustain Mr. Oromo's appeal. Even if we were to conclude that Dr. Donovan's exam in fact took place a month before the date noted in his report, that error would be harmless because the timing of the exam would not have affected the hearing officer's decision. *Higgins v. H.P. Hood, Inc.*, 2007 ME 94, ¶¶ 15, 19, 926 A.2d 1176 (holding that minor clerical errors in independent medical examiner's report having no substantive impact on hearing officer's decision do not render report incompetent). And, because Dr. Donovan was appointed as the independent medical examiner, the hearing officer was required to adopt his medical findings

absent clear and convincing contrary evidence in the record. 39-A M.R.S.A. § 312(7).

[¶13] Finally, even if we accepted as true that the Concentra practitioner did not believe Mr. Oromo's claims based on communications with the employer, this would be harmless error because the hearing officer rejected the Concentra opinion that was unfavorable to Mr. Oromo. *See Cote*, 432 A.2d at 1307.²

III. CONCLUSION

[¶14] Because (1) we find no basis in the record to conclude that Mr. Oromo was provided inadequate translation services at his medical appointments or his hearing before the board, and (2) we conclude that the hearing officer's decision is supported by competent medical evidence in the record, we affirm the hearing officer's decision.

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. 2014).

² Mr. Oromo also asserts that the hearing officer erred when finding that he never returned to work after his shoulder injury. He testified that he attempted to return to work but was sent home. There does not appear to be any dispute, however, that Mr. Oromo did not work for Aramark after his shoulder injury.

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