LISA DOLLIVER
(Appellant)

v.

PRATT & WHITNEY (UTC/RAYTHEON)
(Appellee)

and

AIG CLAIMS SERVICES INC.
(Insurer)

Conference held: September 20, 2023
Decided: October 5, 2023

PANEL MEMBERS: Administrative Law Judges Sands, Chabot, and Elwin
BY: Administrative Law Judge Elwin

[¶1] Lisa Dolliver appeals from a decision of a Workers' Compensation Board administrative law judge (*Stovall, ALJ*) denying her Petitions for Award, Reinstatement, and Payment of Medical and Related Services. Ms. Dolliver contends that the ALJ erred in (1) applying 39-A M.R.S.A. §201(4) without first determining if Ms. Dolliver experienced a gradual work injury; (2) finding that Ms. Dolliver failed to carry her burden of proof either that she experienced a gradual work injury or, if she did have a preexisting condition, that her work activities

contributed to her disability in a significant manner; and (3) relying on a medical opinion not based on facts in the record. We affirm the decision.

I. BACKGROUND

[¶2] Lisa Dolliver worked as a thermal and plasma spray operator for Pratt & Whitney, a manufacturer of engine parts, beginning in April 2006. On the morning of February 25, 2019, Ms. Dolliver experienced severe pain in her right shoulder blade and reported directly to the medical department without going to her workstation. In addition to right shoulder blade pain, she had pain down her right arm and tingling in her fingers. Ms. Dolliver told the medical department that she had used her snowblower on February 19, 2019, and had increased pain ever since.

[¶3] Ms. Dolliver saw her doctor, who prescribed medication and referred her to a chiropractor, Dr. Brink. When chiropractic treatment did not ease her symptoms, Ms. Dolliver saw a neurosurgeon, Dr. Wahlig, who recommended fusion surgery. Ms. Dolliver sought a second opinion with Dr. Knox, who confirmed the diagnosis of right cervical arthropathy and C6 radiculitis but recommended trying conservative treatment.

[¶4] Ms. Dolliver brought petitions to establish the compensability of a gradual neck injury at Pratt & Whitney. The ALJ denied all three petitions. This appeal followed.

II. DISCUSSION

A. Standard of Review

[¶5] 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." *Moore v. Pratt & Whitney Aircraft*, 669 A.2d 156, 158 (Me. 1995) (quotation marks omitted). Here, the ALJ declined to issue further findings of fact and conclusions of law in response to Ms. Dolliver's motion. When a party requests and proposes additional findings of fact and conclusions of law, "we review only the factual findings actually made and the legal standards actually applied" by the ALJ. *Daley v. Spinnaker Indus., Inc.*, 2002 ME 134, ¶ 17, 803 A.2d 446 (quotation marks omitted). As the petitioner, Ms. Dolliver bore the burden of proof on a more likely than not basis. *See Fernald v. Dexter Shoe Co*., 670 A.2d 1382, 1385 (Me. 1996). "When an [ALJ] concludes that the party with the burden of proof failed to meet that burden, we will reverse that determination only if the record compels a contrary conclusion. *Dunlop v. Town of Westport Island*, 2012 ME 22, ¶ 13, 37 A.3d 300 (quotation marks omitted).

B. Application of 39-A M.R.S.A. § 201(4)

[¶6] Ms. Dolliver contends the ALJ improperly applied 39-A M.R.S.A. § 201(4) by failing to first determine whether a gradual work injury occurred at Pratt & Whitney. We disagree with this contention.

[¶7] For purposes of applying § 201(4), the ALJ assumed that a gradual injury had occurred, stating that "[t]he employee's condition may be work related." Nevertheless, the ALJ determined that Ms. Dolliver did not carry her burden of proving that her employment contributed to her disability in a significant manner. This determination was based on the absence of persuasive medical evidence linking Ms. Dolliver's symptoms and disability to her work activities. The only medical opinion supporting Ms. Dolliver's claim was that of Dr. Knox.[1]

[¶8] The ALJ rejected Dr. Knox's opinion because it was based on an inaccurate history. Dr. Knox understood (incorrectly) that Ms. Dolliver was working when she developed severe pain down her shoulder blade and arm. There was no indication that Dr. Knox (1) saw Ms. Dolliver's prior medical records; (2) knew that she had a preexisting condition (diagnosed as osteophytes at the C5-6 and C6-7 levels) following a 2005 motor vehicle accident; or (3) knew the extent of Ms. Dolliver's snow blowing activities (and resulting symptoms) on February 19, 2019.

[1] Although Ms. Dolliver testified that Dr. Wahlig told her that her neck condition was likely due to the repetitive nature of her work activities, Dr. Wahlig's records do not reflect this opinion and he was not asked to provide a written causation opinion.

We find no error in the ALJ's determination that, without a persuasive, supportive medical opinion, Ms. Dolliver was unable to establish that her employment contributed to her disability in a significant manner.

C. Preexisting Condition

[¶9] The ALJ found as fact that Ms. Dolliver had a preexisting cervical condition at C-6. He noted that after a 2005 automobile accident, an MRI showed osteophytes at the C5-6 and C6-7 levels. There was competent evidence in the record to support these findings, and findings of fact that are supported by competent evidence cannot be challenged on appeal. 39-A M.R.S.A. § 321-B(2).

D. Reliance on Dr. Glass's opinion

[¶10] The ALJ did not err when interpreting and adopting portions of Dr. Glass's opinion he found persuasive. *Rowe v. Bath Iron Works Corp.*, 428 A.2d 71, 74 (Me. 1981). Even if, as Ms. Dolliver contends, Dr. Glass misstated the period during which Dr. Brink provided chiropractic treatment, that inaccuracy is immaterial. The ALJ found that Ms. Dolliver had a preexisting cervical condition, a fact that Dr. Glass acknowledged.

[¶11] The ALJ has authority to accept or reject expert medical opinions, in whole or in part. *Leo v. American Hoist & Derrick Co*., 438 A.2d 917, 920-921 (Me. 1981). The choice between competing expert medical opinions is a matter soundly within the purview of the ALJ who hears the case. *Traussi v. B & G Foods, Inc.*, Me.

W.C.B. No. 15-10, ¶ 17 (App. Div. 2015). The ALJ did not err by finding Dr. Glass's medical opinion more persuasive that that of Drs. Knox or Wahlig.

III. CONCLUSION

[¶12] We conclude that there is ample competent evidence in the record that supports the ALJ's factual findings, and the ALJ neither misapplied nor misconstrued the law when determining that Ms. Dolliver failed to sustain her burden of proof that her employment contributed to her disability in a significant manner pursuant to 39-A M.R.S.A. § 201(4).

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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