

STATE OF MAINE
WORKERS' COMPENSATION BOARD

APPELLATE DIVISION
Case No. App. Div. 20-0026
Decision No. 22-17

DERRICK BONSEY
(Appellee)

v.

MAINE DISTRIBUTORS
(Appellant)

and

CROSS INSURANCE TPA, INC.
(Insurer)

Conference held: February 10, 2021
Decided: June 6, 2022

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

[¶1] Maine Distributors appeals from a decision of a Workers' Compensation Board administrative law judge (*Hirtle, ALJ*) granting Derrick Bonsey's Petition for Award of Compensation and awarding him total incapacity benefits from January 25, 2019, to the present and continuing. Maine Distributors argues that the ALJ's decision finding total incapacity as opposed to partial incapacity with an imputation of earnings was in error. We disagree and affirm the decision.

[¶2] Derrick Bonsey began working for Maine Distributors in 2011. His job as a truck driver entailed making numerous stops per day unloading entire pallets of beer to some customers and lifting and carrying individual cases to other customers. In January 2019, he began to experience pain in his right leg. He was ultimately diagnosed with spondylosis impacting the L4 nerve root, and he underwent surgery.

[¶3] Mr. Bonsey filed a Petition for Award, seeking ongoing total incapacity benefits. After a hearing, the ALJ found that Mr. Bonsey sustained a work injury in January 2019 that aggravated a preexisting low back condition, and that his employment contributed to his ongoing disability in a significant manner. *See* 39-A M.R.S.A. § 201(4).

[¶4] With respect to his incapacity level, Mr. Bonsey testified that his work injury resulted in significant limitations on his activities of daily living. His primary care physician, Dr. MacDonald, expressed the opinion that Mr. Bonsey is unable to work due to his low back condition. Both Mr. Bonsey's surgeon, Dr. Marciano, and Dr. Curtis, who examined Mr. Bonsey pursuant to 39-A M.R.S.A. § 207, expressed the opinion that Mr. Bonsey has some level of work capacity, subject to restrictions. The ALJ was persuaded by Mr. Bonsey and Dr. MacDonald, and found that Mr. Bonsey is totally incapacitated.

[¶5] Maine Distributors contends that the ALJ erred when relying on Mr. Bonsey's testimony and the medical opinion of Dr. MacDonald as opposed to the medical opinions of Dr. Marciano and Dr. Curtis when establishing Mr. Bonsey's level of work capacity. However, when conflicting evidence and credibility are at issue, it is for the [ALJ], who "had the opportunity to hear the witnesses and judge their credibility . . . to resolve the evidentiary conflicts in the case." *See Boober v. Great N. Paper Co.*, 398 A.2d 371, 375 (Me. 1979) (quoting *Lovejoy v. Beech Hill*

Dry Wall Co., Inc., 361 A.2d 252, 254 (Me. 1976)). The ALJ, as fact-finder, must weigh competing evidence, and may accept or reject expert medical opinions in whole or in part. *Leo v. Am. Hoist & Derrick Co.*, 438 A.2d 917, 920-21 (Me. 1981); *Jalbert v. N. Me. Med. Ctr.*, Me. W.C.B. No. 18-24, ¶ 7 (App. Div. 2018).

[¶6] The evidence relied on by the ALJ is competent to support the finding that Mr. Bonsey is totally incapacitated. *See Pomerleau v. United Parcel Serv.*, 464 A.2d 206, 209 (Me. 1983). Accordingly, we find no error.

The entry is:

The decision of the Workers' Compensation Board
administrative law judge 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.

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.

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

Attorney for appellee:
Kevin M. Noonan, Esq.
McTEAGUE HIGBEE, PA
P.O. Box 500, Four Union Park
Topsham, ME 04086