DAWN M. STOLIKER
(Appellee)

v.

NORTHERN MAINE MEDICAL CENTER
(Appellant)

and

SYNERNET
(Insurer)

Conference held: April 7, 2016
Decided: January 6, 2017

PANEL MEMBERS: Administrative Law Judges Elwin, Goodnough, and Jerome
BY: Administrative Law Judge Goodnough

[¶1] Northern Maine Medical Center (NMMC) appeals from a decision of a Workers' Compensation Board administrative law judge (*Pelletier*, *ALJ*) granting Dawn Stoliker's Petition for Payment of Medical and Related Services and ordering NMMC to pay for lumbar epidural steroid injections relating to a 2006 work injury. NMMC argues that the ALJ erred by rejecting the report of Dr. Curtis, who examined Ms. Stoliker pursuant to 39-A M.R.S.A § 207 (Supp. 2016). NMMC contends that neither the doctrine of res judicata nor 39-A M.R.S.A § 312 (Supp. 2016) provide a basis for rejecting the report. We affirm the ALJ's decision.

I. BACKGROUND

[¶2] In a prior 2012 decision, the ALJ accepted and adopted the medical findings of Dr. Bradford, an independent medical examiner appointed pursuant to section 312. Dr. Bradford opined, notwithstanding that Ms. Stoliker suffered from a preexisting back condition, that the 2006 work injury was a "significant and continuing event"; that the ongoing effects of that injury had not ended; and that her work-related low back pain responded well to the lumbar epidural steroid injections administered by her treating physician, Dr. Herland. Subsequently, Ms. Stoliker filed her pending Petition for Payment of Medical and Related Services in order to obtain those injections. The evidence in this round of litigation did not include a new section 312 report from Dr. Bradford, or any other independent medical examiner.

[¶3] NMMC argued at hearing that it is not required to pay for the steroid injections because Dr. Curtis opined that Ms. Stoliker's ongoing back problems are no longer caused by the 2006 aggravation injury, but instead, are caused by her preexisting back condition.[1] The ALJ declined to adopt Dr. Curtis's opinion based upon the doctrine of res judicata because his opinion amounted to "a different interpretation of the same medical evidence considered by Dr. Bradford in his 2011 IME." The ALJ concluded that because Dr. Bradford did not review Dr. Curtis's

[1] Dr. Curtis opined in his 2013 report that the effects of the work injury had essentially come to an end by January 2009, prior to the 2012 decision.

opinion, "Dr. Curtis's findings are not admissible to contradict Dr. Bradford's previous findings… ."

[¶4] Having excluded Dr. Curtis's opinion from consideration, the ALJ instead relied on Ms. Stoliker's credible testimony and Dr. Herland's opinion, as well as Dr. Bradford's 2011 IME report, to find that the injections continued to constitute reasonable and necessary medical treatment for the 2006 work-related back injury, and ordered payment.

[¶5] NMMC then filed this appeal. It contends that because Dr. Curtis's report was offered in the context of a new petition and new litigation, it is not barred by res judicata. NMMC also argues that Dr. Curtis's opinion should have been admitted into evidence whether or not Dr. Bradford had an opportunity to review it.

II. DISCUSSION

[¶6] "[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). The ALJ was bound by these findings when deciding the most recent petition, absent a showing of changed circumstances. *Id.* at ¶ 7. Changed circumstances sufficient to overcome the res

judicata effect of these findings must be established with "comparative medical evidence." *Id.* at ¶¶ 7-8. "The purpose of the [comparative evidence] rule is 'to prevent the use of one set of facts to reach different conclusions.'" *McIntyre v. Great N. Paper, Inc.*, 2000 ME 6, ¶ 5, 743 A.2d 744 (quoting *Folsom v. New England Tel. & Tel. Co.*, 606 A.2d 1035, 1038 (Me. 1992)).

[¶7] Dr. Curtis's opinion regarding the lack of ongoing causation is based on the same set of facts that Dr. Bradford considered when finding ongoing causation in 2011. Dr. Curtis simply came to a different medical conclusion in a report issued two years later. This is precisely what the doctrine of res judicata is designed to prevent. We therefore find no error in the ALJ's decision, based upon application of res judicata principles, that the effects of the 2006 work injury are ongoing and that the steroid injections constitute reasonable and proper medical treatment.

[¶8] NMMC also contends that the ALJ erred when ruling that because Dr. Bradford, the IME in the prior litigation, did not review Dr. Curtis's findings, those findings were not admissible to contradict Dr. Bradford's previous findings that the effects of the work injury were ongoing and that the steroid injections provided beneficial treatment. NMMC further asserts that because Dr. Bradford was not appointed as an IME in this proceeding**,** there was no requirement that he review

Dr. Curtis's report in order for that report to be considered by the ALJ as possible clear and convincing contrary evidence.

[¶9] Section 312(7) provides that the IME's medical findings must be adopted unless there is clear and convincing contrary evidence in the record. "Contrary evidence does not include medical evidence not considered by the independent medical examiner." 39-A M.R.S.A § 312(7). We agree with NMMC that section 312(7) is a rule regarding the weight to be given to medical evidence**,** and has no bearing on whether medical evidence is or is not admissible. We also agree with NMMC that because Dr. Bradford was not assigned as a section 312 examiner in this proceeding, and did not offer an updated opinion of any kind, there was no requirement that he personally review Dr. Curtis's report in order for Dr. Curtis's report to be considered as evidence by the ALJ, whether it is contrary evidence, or not.

[¶10] Dr. Curtis's report, however, was not excluded from the evidentiary record. It is evident on the face of the decree that the ALJ reviewed and considered Dr. Curtis's report when determining whether res judicata principles were applicable. The ALJ properly considered that the facts established in the prior decree were preclusive as to causation and the reasonableness of the medical treatment at issue. Because Dr. Curtis's report was admitted and considered for this purpose, it is of no consequence that it was not considered for the other proffered

purposes. Any language in the decision concerning the inadmissibility of Dr. Curtis's report due to the operation of section 312(7) is therefore harmless.

III. CONCLUSION

[¶11] We conclude that the ALJ's decision to reject Dr. Curtis's opinion on res judicata grounds, and to grant Ms. Stoliker's petition based upon her credible testimony and the opinion of her treating physician, involved no misconception or misapplication of the law. The factual findings made were supported by competent evidence and 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). Finally, the errors discussed above regarding the admissibility of Dr. Curtis's report were harmless.

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. 2016).

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

Attorney for Appellee:
Daniel R. Lawson, Esq.
WCB ADVOCATE DIVISION
43 Hatch Drive, Suite #140
Caribou, ME 04736