RALPH MARTIN
(Appellant)

v.

GEORGE C. HALL & SONS, INC.
(Appellee)

and

ACADIA INSURANCE COMPANY
(Insurer)

Conference held: May 18, 2017
Decided: October 3, 2018

PANEL MEMBERS: Administrative Law Judges Collier, Goodnough, and Knopf
BY: Administrative Law Judge Collier

[¶1] Ralph Martin appeals from a decision of a Workers' Compensation Board Administrative Law Judge (*Elwin, ALJ*) granting his petitions in part, but denying the compensability of certain prescription medication. Mr. Martin argues that the ALJ erred by considering the risk of narcotic dependence in determining whether his treatment was "reasonable and proper" within the meaning of 39-A M.R.S.A. § 206 (Supp. 2017). We disagree, and affirm the decision.

I. BACKGROUND

[¶2] Mr. Martin did masonry and excavation work for the employer, George C. Hall & Sons, Inc. On December 5, 2013, he suffered a work-related low back fracture when he fell in the back of his work truck. He underwent surgery in July

2014 but continued to experience pain in his back and legs, for which his primary care provider prescribed narcotic pain medication.

[¶3] There was conflicting evidence concerning the effectiveness of Mr. Martin's medication. On the one hand, Mr. Martin's primary care provider noted that Mr. Martin was significantly more comfortable and that his activity level improved after a dosage increase in September 2015.

[¶4] On the other hand, Mr. Martin testified on November 10, 2015, that the medication only somewhat controlled his pain,[1] and that he was suffering side effects from that medication. Mr. Martin's physiatrist remarked on May 20, 2014, that "we all need to have the goal of stopping those medications at some point." In October 2014 and again in October 2015, Dr. Kimball, Hall & Sons' medical examiner, *see* 39-A M.R.S.A. § 207 (Supp. 2017), opined that Mr. Martin's physical condition did not warrant the use of narcotic pain medication. Although there was no evidence that Mr. Martin had misused his medication, doctors expressed concern about long-term use.

[¶5] The ALJ, citing the opinion of the section 207 examiner and the lack of a persuasive opinion that the long-term use of narcotics was appropriate for Mr. Martin's back condition, determined that the ongoing use of narcotic medication was not reasonable and necessary, and therefore not compensable. The ALJ was

[1] Specifically, Mr. Martin testified that "the pain just gets worse and worse and worse—it don't make a difference how many pills you take. You can take them, but it ain't going to help, if I'm being honest with you. If it helps, it backs it down a little bit, but once it gets to a point, forget it."

not persuaded by Mr. Martin's testimony that the benefit of narcotic pain medication outweighed the risk of long-term dependence.

[¶6] Mr. Martin filed a Motion for Further Findings of Fact and Conclusions of Law, which the ALJ granted, but only to further explain her previous conclusion regarding Mr. Martin's medication. Mr. Martin appeals.

II. DISCUSSION

[¶7] Employees who suffer work-related injuries are entitled to "reasonable and proper" medical treatment, paid for by the employer. *See* 39-A M.R.S.A. § 206 (Supp. 2017). Mr. Martin argues that the ALJ misapplied section 206 by weighing the benefits of his prescriptions against the side effects and risk of dependence. Section 206, Mr. Martin argues, does not allow such a risk-benefit analysis. We disagree.

[¶8] Both the risks and the benefits of a disputed medical treatment are relevant to whether they are reasonable and proper within the meaning of section 206. *Rugan v. The Dole Co.*, Me. W.C.C. 5-342 (Me. App. Div. 1984) ("[T]he commissioner must make a finding as to whether the item being claimed is necessary to the employee's welfare . . . and whether the item is reasonable and proper in terms of both its benefits and cost."). By Mr. Martin's own testimony, the medications had significant side effects and their benefit was marginal. The ALJ

did not err by considering these risks and benefits together to conclude that the treatment was not reasonable and proper.

[¶9] Mr. Martin further contends that the ALJ improperly denied compensation for an otherwise reasonable medical treatment merely because it yielded a disappointing outcome, citing *Hamel v. Pizzagalli Corp.*, 386 A.2d 741, 744 (Me. 1978) (stating "that the treatment [the employee's doctor] prescribed did not produce the results he hoped for is hardly an appropriate basis for the employer to refuse payment for the services rendered.").

[¶10] This argument lacks merit. The ALJ's determination that narcotic medication was not reasonable and proper is supported by competent medical evidence in the record. Mr. Martin's treating physician expressed misgivings about his long-term use of narcotics, and the section 207 examiner opined that Mr. Martin's prescription regimen was inappropriate. Although Mr. Martin's prescribing physician presumably disagreed, the ALJ did not err by resolving the disagreement in favor of noncompensability. *See Leo v. Am. Hoist & Derrick Co.*, 438 A.2d 917, 920–21 (Me. 1981) ("In carrying out his responsibility as fact finder, the Commissioner must weigh competing evidence and is not required to accept or reject the whole testimony of particular medical experts.").

III. CONCLUSION

[¶11] The ALJ did not err by considering the risks and side effects of Mr. Martin's disputed treatment to determine whether it was compensable. Such factors are relevant to whether medical treatment is reasonable and necessary within the meaning of section 206. The fact that Mr. Martin's treatment provided some limited benefit does not compel the conclusion that it is proper, given the competent evidence to the contrary.

The entry is:

The ALJ'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. 2017).

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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