STATE OF MAINE
WORKERS' COMPENSATION BOARD

APPELLATE DIVISION
Case No. App. Div. 17-0052
Decision No. 20-14

DEBRA A. BARAL
(Appellant)
v.

ALLIANCE HEALTH DOCUMENTATION, LLC
(Appellee)

and

TWIN CITY FIRE INSURANCE CO.
(Insurer)

Conference held: May 26, 2020[1]
Decided: July 14, 2020

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

[¶1] Debra Baral appeals from a decision of a Workers' Compensation Board administrative law judge (*Hirtle*, *ALJ*) granting in part her Petitions for Award of Compensation and for Payment of Medical and Related Services related to two dates of injury: August 15, 2014, and October 24, 2015. Ms. Baral contends that the ALJ's decision to reject the independent medical examiner's (IME) findings regarding carpal tunnel syndrome was not supported by clear and convincing evidence. *See* 39-A M.R.S.A. § 312 (Pamph. 2020). We conclude that there was a sufficient basis to reject the relevant portion of the IME's opinion and affirm the decision.

[1] The conference on this case was initially held on June 13, 2018, with ALJ Stovall on the panel. ALJ Stovall has since recused himself from the case, and it was re-conferenced on May 26, 2020, with ALJ Chabot joining the panel.

I. BACKGROUND

[¶2] Ms. Baral worked as a medical transcriptionist for more than twenty years. In July 2013, while working for Alliance Health Documentation, her hours were increased from 30 to 40 hours per week. After the increase, she gradually developed bilateral thumb pain, which lead her to take time off on August 15, 2014. She reported her injury to Alliance the next day.

[¶3] Ms. Baral first sought medical treatment on December 19, 2014. At that time, she reported having had bilateral thumb/wrist pain for a year and a half. She was diagnosed with CMC arthritis, left greater than right. She followed this appointment with massage therapy on May 12, 2015. She continued working and reported right ring finger pain on October 24, 2015. She was referred to Concentra and was diagnosed with right flexor tenosynovitis. She was subsequently referred to physical therapy, which she engaged in for approximately two weeks.

[¶4] On August 23, 2016, Ms. Baral was evaluated by Dr. Richard Mazzei. pursuant to 39-A M.R.S.A. § 312. Dr. Mazzei diagnosed her with the following: preexisting thumb CMC arthritis, significantly aggravated by her work activities; and right flexor tenosynovitis and right-handed carpal tunnel, both caused by her work activities.

[¶5] There are no medical opinions in the record contrary to Dr. Mazzei's, nor any that mention carpal tunnel occurring on or around August 15, 2014 or October 24, 2015.

[¶6] The ALJ adopted the IME's opinion regarding the thumb CMC arthritis and right flexor tenosynovitis but rejected the opinion regarding carpal tunnel. He accordingly granted Ms. Baral's Petitions for Award of Compensation and Petitions for Payment of Medical and Related Services in part. Ms. Baral filed a Motion for Further Findings of Fact and Conclusions of Law, which the ALJ denied. This appeal followed.

II. DISCUSSION

A. Standard of Review

[¶7] The Appellate Division's role on appeal is "limited to assuring that the [ALJ's] factual 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). When a party requests and proposes additional findings of fact and conclusions of law, as was done in this case, the Appellate Division reviews "only the factual findings actually made and the legal standards actually applied" by the ALJ. *Daley v. Spinnnaker Indus*., 2002 ME 134, ¶ 17, 803 A.2d 446 (quotation marks omitted).

B. Rejection of the Independent Medical Examiner's Opinion

[¶8] When appointed by the board, an IME is required to submit a written report "stating the examiner's medical findings on the issues raised by that case and providing a description of findings sufficient to explain the basis of those findings." 39-A M.R.S. §312(5). The ALJ is required to adopt those findings

> unless there is clear and convincing evidence to the contrary in the record that does not support the medical findings. Contrary evidence does not include medical evidence not considered by the independent medical examiner. The board shall state in in writing the reasons for not accepting the medical findings of the independent medical examiner.

39-A M.R.S.A. § 312(7). Otherwise, the decision to accept or reject a particular medical opinion, in whole or in part, is a matter with the ALJ's sound discretion. *See Leo v. Am. Hoist & Derrick Co.*, 438 A.2d 917, 920-21 (Me. 1981); *Davis v. Boise Cascade*, Me. W.C.B. 17-41, ¶ 21 (App. Div. 2017). The Law Court has interpreted the "clear and convincing evidence to the contrary" standard to require a showing "that it was highly probable that the record did not support the IME's medical findings." *Dubois v. Madison Paper, Co.*, 2002 ME 1, ¶ 14, 795 A.2d 696.

[¶9] Ms. Baral contends that the ALJ was required to adopt the IME's finding that her right-handed carpal tunnel problem was related to her alleged work injuries because there was no contrary evidence in the record. She contends that the absence of other evidence supporting the IME's medial findings does not provide a legitimate basis for rejecting those findings.

[¶10] The ALJ rejected the IME's findings regarding carpal tunnel syndrome for the following reasons:

> Neither Dr. Mazzei's report, nor any other medical opinion in the record provides guidance as to when the diagnosis or symptoms of right carpal tunnel syndrome came about in comparison to Ms. Baral's symptoms of bilateral thumb arthritis and ring finger triggering which were contemporaneously reported and diagnosed. . . .
>
> I find that Dr. Mazzei's causation opinion regarding Ms. Baral's right carpal tunnel syndrome was provided in a cursory manner without an explanation of how that diagnosis (made for the first time at their examination in August of 2016) relates to injuries several years prior on either August 15, 2014 or October 24, 2015.

The ALJ further concluded that the lack of medical support in the record resulted in clear and convincing evidence contrary to Dr. Mazzei's opinion.

[¶11] Rejection of an IME's medical findings on the sole basis that those findings have no other support in the evidentiary record may constitute legal error. The lack of corroborating evidence alone does not amount to clear and convincing contrary evidence.[2] However, this was not the sole reason given by the ALJ for rejecting the IME's findings regarding carpal tunnel. The ALJ rejected that portion of the IME's opinion because he found the report was not sufficient to explain the basis of the opinion, was not supported by competent evidence, and did not provide

[2] To the extent that the ALJ's decision can be construed to state that the absence of other evidence consistent with the IME's medical findings constitutes clear and convincing contrary evidence, such a statement constitutes harmless error, given the other reasons relied on by the ALJ in rejecting the IME's medical findings. *See Midland Fiberglass v. L.M. Smith Corp.*, 581 A.2d 402, 403 (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).

guidance for when this date of injury manifested or how it was connected to the alleged August 15, 2014, and October 24, 2015, dates of injury. In effect, the ALJ determined that the report was not sufficient to establish that the carpal tunnel resulted from the alleged work injuries of August 15, 2014 or October 24, 2015.

[¶12] In *Daniels v. S.D. Warren*, Me. W.C.B. No. 17-42, ¶¶ 10-11 (Me. 2017), we affirmed the rejection of an IME's medical findings as insufficient to meet the employee's burden on a petition for review, which requires comparative medical evidence to show changed medical circumstances. The employee had argued that the ALJ was required to adopt the IME's medical findings regarding the employee's current level of incapacity. *Id.* ¶ 5. However, the IME failed to make a comparison between the employee's incapacity level at the time of the prior decree and the time of the current examination. *Id.* ¶ 9. As such, we concluded that the report was insufficient to establish changed circumstances. *Id.* ¶ 10.

[¶13] As in *Daniels*, the ALJ in this case rejected a portion of the IME's opinion because he concluded that it was insufficient to establish an element of the employee's burden—a connection between the carpal tunnel condition and the alleged dates of injury—and because the report did not sufficiently explain the basis for the findings regarding carpal tunnel. The ALJ did not err when rejecting that portion of the IME's opinion.

[¶14] Moreover, based on the report's insufficiencies, the ALJ concluded that it was highly probable that the record did not support the independent medical examiner's medical findings on carpal tunnel syndrome.

[¶15] The ALJ neither misconceived nor misapplied the law in his conclusion.

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 (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.

Attorney for appellant:
Christopher J. Cotnoir, Esq.
Workers Compensation Board
Employee Advocate Division
71 State House Station
Augusta, ME 043331

Attorney for appellee:
Joshua E. Birocco, Esq.
TUCKER LAW GROUP
P.O. Box 696
Bangor, ME 04402