STATE OF MAINE
WORKERS' COMPENSATION BOARD

APPELLATE DIVISION
App. Div. Case No. 13-0006
Decision No. 13-12

NICHOLAS DIONNE
(Appellee)
v.

SAM'S ITALIAN FOODS
(Appellant)

and

EASTGUARD INSURANCE CO.
(Insurer)

Decided: October 25, 2013
Conferenced: July 24, 2013

Panel Members: Hearing Officers Elwin, Stovall, and Collier
By: Hearing Officer Elwin

[¶1] Sam's Italian Foods appeals from a decision of a Workers' Compensation Board hearing officer (*Goodnough, HO*) granting Nicholas Dionne's Petitions for Award and for Payment of Medical and Related Services for a December 20, 2010 work injury. We affirm the hearing officer's decision.

I. BACKGROUND

[¶2] Mr. Dionne suffers from a pre-existing condition in the left knee, osteochondritis dissecans, for which he underwent surgery in 2007. He aggravated that condition at work at Sam's Italian Foods (Sam's) on December 20, 2010 when, while serving customers, he skipped over two steps and twisted his knee upon landing. He further aggravated that injury at a family gathering on December 25, 2010, when he planted his left foot and kicked a tennis ball with his right foot.

Mr. Dionne experienced pain and iced his knee repeatedly after the December 20, 2010, injury, but he did not seek medical treatment until after the second incident. Since that time, he has undergone two surgeries on the left knee, and may need additional surgery in the future.

[¶3] The hearing officer adopted the medical findings of the independent medical examiner (IME), *see* 39-A M.R.S.A. § 312(7) (Supp. 2012), and found that Mr. Dionne sustained an injury arising out of and in the course of employment at Sam's on December 20, 2010, which amounted to a significant aggravation of the pre-existing left knee condition. The hearing officer allocated 50% responsibility to the December 20 injury, and 50% to the non-work-related, December 25 injury, pursuant to 39-A M.R.S.A. § 201(5) (Supp. 2012).

[¶4] Mr. Dionne filed a motion for additional findings of fact and conclusions of law. In response, the hearing officer found that the subsequent aggravation of the knee injury on December 25 was causally connected to the December 20, 2010 injury, and therefore, no allocation pursuant to section 201(5) was required. *See Mushero v. Lincoln Pulp & Paper*, 683 A.2d 504, 505-06 (Me. 1996). He granted both petitions, and awarded Mr. Dionne payment of his medical bills and total incapacity benefits for the two closed-end periods, January 12 to February 27, 2011, and August 23 to September 2, 2011, surrounding his surgeries. Sam's now appeals the hearing officer's decision, raising three issues.

II. DISCUSSION

[¶5] Sam's first contends that the hearing officer erred by adopting certain nonmedical findings made by the IME that purport to establish the factual predicate for causation—that factual predicate being that Mr. Dionne experienced pain symptoms after the December 20 incident that did not resolve before the December 25 incident. Sam's asserts that the IME took Mr. Dionne's factual representations as true without having access to all of the contrary evidence in the record, and that the hearing officer improperly relied on the IME's credibility assessment.

[¶6] We disagree with this contention. Although the hearing officer did mention the IME's assessment of Mr. Dionne's credibility in the decree, this does not mean that he failed to make an independent assessment. The hearing officer specifically noted that the IME's assessment was "in accord with" his own. Furthermore, the hearing officer made an implicit credibility finding when he made factual findings that are consistent with Mr. Dionne's testimony and inconsistent with the contrary evidence. The findings that provide the factual underpinning for causation—that Mr. Dionne sustained an injury to his left knee on December 20, 2010, "when he skipped over two steps, twisting the knee upon landing and pivoting with his left leg"; that Mr. Dionne "had been icing the knee after the work injury in the days leading up to the [December 25] aggravation"; and "it was likely

that he was still symptomatic at the time of the aggravation"—are supported by Mr. Dionne's testimony, and the hearing officer specifically referred to the relevant portion of the transcript. The hearing officer also noted the employer's argument that Mr. Dionne had fabricated the occurrence of the work injury; in rejecting that argument, the hearing officer necessarily accepted Mr. Dionne's version of events. Accordingly we find no error. *See MacKenzie v. H. Tabenken & Co., Inc*., 382 A.2d. 1047, 1049 (Me. 1978) (stating that an employee's testimony alone, if believed, is sufficient to support a hearing officer's findings); *see also Dunton v. Eastern Fine Paper Co.*, 423 A.2d 512, 518 (Me. 1980) ("Although the evidence may also support a different result, our role is limited to determining whether there is competent evidence to support the [hearing officer's] findings.").

[¶7] Second, Sam's contends that the hearing officer was required to adopt the finding in the IME's report that the effects of both December 2010 injuries had resolved by the fall of 2011. *See* 39-A M.R.S.A. § 312(7) (Supp. 2012) ("The board shall adopt the medical findings of the independent medical examiner unless there is clear and convincing evidence to the contrary in the record."). The IME testified in his deposition that Mr. Dionne had returned to baseline, or his pre-injury state, by September of 2011. However, the IME also testified that Mr. Dionne might need future knee surgery in the form of an allograft procedure, and the potential need for that surgery could result from either the December 2010

injury or from the natural progression of the underlying disease process. Thus, the hearing officer was not bound pursuant to section 312(7) to make a finding of fact that the December 2010 injury had resolved.

[¶8] Third, Sam's asserts that the hearing officer erred by failing explicitly to resolve conflicts in the evidence and inconsistencies in the testimony when issuing additional findings of fact and conclusions of law. A hearing officer is not required explicitly to indicate which witnesses the hearing officer believes or why certain testimony has been believed in whole or in part. A hearing officer is merely required to issue findings that are adequate for appellate review. *See Chapel Road Assocs., L.L.C. v. Town of Wells*, 2001 ME 178, ¶ 10, 787 A.2d 137 (stating that adequate findings include those that allow a reviewing body effectively to determine the basis of the agency's decision; that is, whether the decision is supported by the evidence). The findings are adequate in this case.

The entry is:

The hearing officer's decision is affirmed.

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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. 2012).