

JOHN MAKRIDIS  
(Appellee)

v.

DYSART'S SERVICE, INC.  
(Appellant)

and

FUTURECOMP  
(Insurer)

Conference held: November 30, 2016  
Decided: November 3, 2017

PANEL MEMBERS: Administrative Law Judges Collier, Elwin, and Stovall  
BY: Administrative Law Judge Stovall

[¶1] Dysart's Service, Inc., appeals from a decision of a Workers' Compensation Board administrative law judge (*Hirtle, ALJ*) granting John Makridis's Petition for Payment of Medical and Related Services, and ordering Dysart's to pay for accrued and ongoing medical care relating to a July 30, 2013, work injury. Dysart's contends that the ALJ erred in (1) determining that Mr. Makridis's thrombophlebitis, discovered in March 2015, was causally-related to the initial work-related injury; (2) concluding that Mr. Makridis's employment made a significant contribution to the development of the thrombophlebitis, thereby satisfying 39-A M.R.S.A § 201(4) (2001); and (3) concluding that Mr.

Makridis's hospitalization constitutes reasonable and proper medical service under the Maine Workers' Compensation Act. We affirm the decision.

## I. BACKGROUND

[¶2] Mr. Makridis tore the meniscus in his left knee while working for Dysart's on July 30, 2014. The injury resulted in a knee surgery on October 29, 2014. Mr. Makridis's mobility was severely limited during his recovery. On March 18, 2015, Mr. Makridis went to the emergency room after he developed chest and leg pain. The chest pain was determined to be musculoskeletal, but diagnostics uncovered thrombophlebitis in Mr. Makridis's left knee. His doctor prescribed an anticoagulant medication that Mr. Makridis could not afford as an outpatient. Because hospital policy did not allow the medication to be dispensed on an outpatient basis without payment, the hospital administered the medication to Mr. Makridis as an inpatient for three days.

[¶3] Mr. Makridis filed a Petition for Payment of Medical and Related Services when Dysart's refused to pay for his thrombophlebitis treatment. During litigation, an independent medical examiner evaluated Mr. Makridis pursuant to 39-A M.R.S.A. § 312 (Supp. 2016). The examiner reported that Mr. Makridis's 2015 thrombophlebitis resulted from the combined effects of his knee surgery and a 2007 episode of deep vein thrombosis, which together increased his risk of his developing thrombophlebitis. At deposition, the examiner further explained his

report and opined that Mr. Makridis's work injury substantially aggravated his preexisting venous condition. The examiner's opinion was that anticoagulation therapy was necessary to treat Mr. Makridis's thrombophlebitis.

[¶4] After a hearing, the ALJ adopted the opinion of the independent medical examiner, finding that Mr. Makridis's knee injury combined with his preexisting condition to cause his 2015 episode of thrombophlebitis. Furthermore, the ALJ concluded that Mr. Makridis's employment contributed to his disability in a significant manner, thereby satisfying 39-A M.R.S.A. § 201(4). Dysart's 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

[¶5] 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." *Pomerleau v. United Parcel Serv.*, 464 A.2d 206, 209 (Me. 1983) (quotation marks omitted).

### B. Evidence of Causation

[¶6] There was no dispute that Mr. Makridis's primary injury, his torn meniscus, is compensable. Dysart's contends that there was no competent evidence

to support the ALJ's finding that Mr. Makridis's thrombophlebitis was causally connected to the work injury. We disagree.

[¶7] The ALJ relied on the independent medical examiner's report when determining that there was a causal connection between the work injury and subsequent thrombophlebitis. Absent clear and convincing evidence to the contrary, an ALJ must adopt the medical findings of an independent medical examiner. *See* 39-A M.R.S.A. § 312(7) (2001). Although the examiner acknowledged in his deposition that non-occupational factors played a role, he further explained that Mr. Makridis's knee surgery and subsequent immobility increased his risk of developing thrombophlebitis and that the temporal correlation between the surgery and the thrombophlebitis made a causal connection between the two probable. Because this opinion provides a rational basis for the ALJ's determination on the issue of causation, we find no error. *See Dillingham v. Great N. Paper*, Me. W.C.B. No. 15-7, ¶ 3 (App. Div. 2015); *see also, e.g., Crocker v. Eastland Woolen Mill, Inc.*, 392 A.2d 32, 34 (Me. 1978) (awarding benefits for aggravation of a preexisting back condition that was caused by the employee's use of crutches necessitated by a work-related foot injury); 1 ARTHUR LARSON & LEX K. LARSON, *LARSON'S WORKERS' COMPENSATION LAW*, § 10.01 (Matthew Bender, Rev. Ed. 2016) ("The basic rule is that a subsequent injury, whether an aggravation

of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.”).

C. Title 39-A M.R.S.A. § 201(4)

[¶8] This case involves an alleged work injury that combined with a preexisting medical condition. Liability is therefore ultimately determined pursuant to 39-A M.R.S.A. § 201(4). *MacAdam v. United Parcel Serv.*, 2001 ME 4, ¶ 11, 763 A.2d 1173. Section § 201(4) provides:

**Preexisting Condition.** If a work-related injury aggravates, accelerates or combines with a preexisting physical condition, any resulting disability is compensable only if contributed to by the employment in a significant manner.

[¶9] Dysart’s contends that the ALJ misconstrued section 201(4) by failing to evaluate whether the employment contributed to the resulting disability in a significant manner, citing *Celentano v. Department of Corrections* 2005 ME 125, ¶ 18, 887 A.2d 512 (“[T]he appropriate analysis is whether the employment, rather than the injury, contributed significantly to the employee's disability.”). Dysart’s asserts that Mr. Makridis’s knee surgery, not his employment activity, contributed to his development of thrombophlebitis; thus the employment contribution to his disability was zero.

[¶10] We reject this interpretation of section 201(4). By its plain language, section 201(4) does not foreclose an employee from receiving benefits for a disability that results from the work-related aggravation of an otherwise

nonwork-related, preexisting condition, provided the employment makes a significant contribution to that disability. The ALJ found that the act of “lifting a case of product in the Employer’s freezer”—work activity—caused the torn meniscus. The ALJ further found that Mr. Makridis’s thrombophlebitis was the result of the combined effects of this work-related knee injury and the preexisting condition, and that the employment-related component of those combined effects made a substantial contribution to his disability. Those findings are sufficient to satisfy section 201(4). *See Celentano*, 2005 ME 125, ¶ 18; *see also Crocker*, 392 A.2d at 34; 1 LARSON ET AL., § 10.03 (stating that when “the existence of the primary compensable injury in some way exacerbates the effects of an independent medical weakness or disease . . . as long as the causal connection is in fact present[,] the compensability of the subsequent condition is beyond question.”).

#### D. Medical Treatment

[¶11] Dysart’s argues that the ALJ erred in concluding that Mr. Makridis’s hospitalization for three days to receive anticoagulation therapy constitutes “reasonable and proper” medical treatment under 39-A M.R.S.A. § 206 (Supp. 2016). Dysart’s asserts that the hospitalization was not causally related to the injury because treatment as an inpatient was necessitated by hospital policy rather than medical need.

[¶12] The Workers’ Compensation Act requires employers to pay for “reasonable and proper” medical treatment, “as needed” to treat a compensable injury. 39-A M.R.S.A § 206 (Supp. 2016). The independent medical examiner opined that anticoagulation therapy was reasonable and necessary. We find no legal error in the ALJ’s adoption of that opinion. Moreover, under the circumstances of this case, where hospital policy required inpatient treatment, we cannot say that the ALJ erred when determining that the treatment was reasonable and proper pursuant to section 206. *See Brawn v. Gloria’s Country Inn*, 1997 ME 191, ¶ 11, 698 A.2d 1067 (stating that the “ultimate purpose” of section 206 is “to provide reasonable relief from the effects of a work-related injury.”)

The entry is:

The administrative law judge’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. 2016).

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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