ARTHUR HASKELL
(Appellee)

v.

KATAHDIN PAPER COMPANY
(Appellant)

and

SEDGWICK CLAIMS MANAGEMENT

v.

GNP MAINE HOLDINGS, LLC
(Appellee)

and

MEMIC
(Insurer)

Argument held: January 25, 2017
Decided: December 13, 2017

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

[¶1] Arthur Haskell suffered two work-related injuries to his neck and related body parts while working at the paper mill in East Millinocket. The first injury occurred in 2010 when Katahdin Paper Company owned the mill, and the second occurred in 2013 under GNP Maine Holdings' ownership. Katahdin Paper appeals from a decision of a Workers' Compensation Board administrative law judge (*Hirtle, ALJ*) granting in part GNP Maine Holdings' Petition for

Apportionment,[1] and finding each employer liable for 50% of Mr. Haskell's indemnity and medical benefits.

[¶2] Katahdin Paper contends (1) the ALJ erred in relying on a report issued pursuant to 39-A M.R.S.A. § 312 (Supp. 2016), prior to the second date of injury in this case, when authorizing an apportionment under 39-A M.R.S.A. § 354 (Supp. 2016); and (2) there is otherwise insufficient evidence to support apportionment in this case. We affirm the ALJ's decision.

I. BACKGROUND

[¶3] On February 16, 2010, Arthur Haskell suffered a work-related injury to his neck with radiating pain into his right arm and hand. An independent medical examiner (IME) issued a report pursuant to section 312 on June 9, 2011, diagnosing multi-level degenerative disc disease with right-sided foraminal narrowing at C5-6 and C6-7. The IME opined that the work activities on February 16, 2010, significantly aggravated this condition. Mr. Haskell improved after an injection, and he was able to continue working full duty at the mill.

[¶4] After the mill closed in 2011, Mr. Haskell found work with another employer. He resumed working at the mill in late 2011 when it reopened under GNP's ownership. On July 8, 2013, Mr. Haskell suffered a second work-related injury when a heavy hand tool fell from above and struck him on the back of his

[1] The ALJ also granted Mr. Haskell's Petition for Review and awarded him total incapacity benefits. That Petition is not the subject of this appeal.

head and right shoulder. As a result, he suffered a recurrence of radiating right arm and hand symptoms, and neck pain. He went out of work on January 7, 2014, and GNP began paying total incapacity benefits without prejudice for this injury.

[¶5] The following year, GNP sought to reduce its payment pursuant to 39-A M.R.S.A. § 205(9)(B)(1) (Supp. 2016). Mr. Haskell filed his Petition for Review and a Request for Provisional Order. After the board (*Greene, ALJ*) granted the provisional order, GNP filed its Petition for Apportionment, seeking contribution from Katahdin Paper for benefits paid and ongoing.

[¶6] The board (*Hirtle, ALJ*) granted the apportionment petition in part, finding that the two work injuries combined to produce a single incapacitating condition. The ALJ rejected the only medical opinion submitted on the issue of apportionment—that Mr. Haskell's current condition results only 15% from the 2013 injury, and 85% from the pre-existing degenerative condition—and found each employer responsible for 50% of the incapacity and medical benefits claimed. *See Kidder v. Coastal Constr. Co., Inc.*, 342 A.2d 729, 734 (Me. 1975). Katahdin Paper filed a Motion for Additional Findings of Fact and Conclusions of Law, which the ALJ denied, then filed its notice of appeal.

II. DISCUSSION

A. Standard of Review

[¶7] The role of the Appellate Division 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 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). *See also 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 in this case, "we review only the factual findings actually made and the legal standards actually applied by the [ALJ]." *Daley v. Spinnaker Indus., Inc*., 2002 ME 134, ¶ 17, 803 A.2d 446 (quotation marks omitted).

B. Competent Evidence to Support the Apportionment

[¶8] Title 39-A M.R.S.A. § 354 provides, in relevant part:

> **1. Applicability.** When 2 or more occupational injuries occur, during either a single employment or successive employments, that combine to produce a single incapacitating condition and more than one insurer is responsible for that condition, liability is governed by this section.
>
> **2. Liability to employee.** If an employee has sustained more than one injury while employed by different employers, or if an employee has sustained more than one injury while employed by the same employer and that employer was insured by one insurer when the first injury occurred and insured by another insurer when the subsequent injury or injuries occurred, the insurer providing coverage

> at the time of the last injury shall initially be responsible to the employee for all benefits payable under this Act.
>
> **3. Subrogation.** Any insurer determined to be liable for benefits under subsection 2 must be subrogated to the employee's rights under this Act for all benefits the insurer has paid and for which another insurer may be liable. . . .

[¶9] Katahdin Paper maintains that the ALJ erred when relying on the IME's June 9, 2011, report, which predated the 2013 injury, and Mr. Haskell's testimony that his neck pain never ceased after 2010, when concluding that the two injuries combined to create one single incapacitating condition. The ALJ, however, considered other record evidence in reaching the conclusion that apportionment was appropriate. In addition to the IME's report and Mr. Haskell's testimony, the ALJ also took into account the mill's medical department records, which documented the ongoing nature of Mr. Haskell's 2010 injury and the exacerbating effect of the 2013 injury. Based on all of this evidence, and reasoning that the two injuries affected the same part of the body and produced two largely overlapping sets of symptoms, the ALJ concluded that the two work injuries combined to produce a single incapacitating condition. There is competent evidence to support that finding.

[¶10] Katahdin Paper also argues that the ALJ erred in applying the rule set forth in *Kidder* regarding equal apportionment where there is no medical evidence specific to that issue. The Law Court stated in *Kidder*: "In any case in which the

causative contribution to the single indivisible injury by each respective employer may be ascertained, liability should be fixed in proportion to such contribution. Where . . . such apportionment is impossible, liability for compensation payments may properly be divided equally." 342 A.2d at 734.

[¶11] We find no error. The ALJ rejected the only apportionment opinion on the basis that it was founded on a medical/legal theory—attributing the lion's share of responsibility for Mr. Haskell's condition not to either work injury but to his preexisting condition—that had been rejected in a prior decree. There was no other specific apportionment opinion in the record. In the absence of specific credible evidence on that issue, the ALJ did not err in ordering an equal apportionment between the employers.

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).
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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