

CLIFFORD LeCLAIR
(Appellee)

v.

TWIN RIVERS PAPER COMPANY, LLC
(Appellant)

and

SEDGWICK CMS

Argument held: February 8, 2018
Decided: April 10, 2018

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

[¶1] Twin Rivers Paper Company, LLC, appeals from a decision of a Workers' Compensation Board Administrative Law Judge (*Pelletier, ALJ*) granting Clifford LeClair's Petition for Award and Petition for Payment of Medical and Related Services regarding an injury date of December 28, 2012. Twin Rivers contends that the ALJ erred by admitting into evidence and relying on the medical findings of the independent medical examiner (IME) appointed by the board pursuant to 39-A M.R.S.A. § 312 (Supp. 2017). Twin Rivers argues that because Mr. LeClair brought materials with him to his IME appointment that had not first been provided to Twin Rivers or the board, and the IME reviewed and considered those materials, the report should have been excluded from the evidentiary record. Finding no reversible error, we affirm the decision.

I. BACKGROUND

[¶2] Clifford LeClair worked for Twin Rivers Paper Company and was assigned to a control room that had a mold problem. Mr. LeClair developed a respiratory condition that prompted the present claim. With his petitions, Mr. LeClair sought to establish that his respiratory condition was related to his mold exposure and that Twin Rivers was responsible for the costs of medical care resulting from his respiratory condition.

[¶3] During the course of litigation, Mr. LeClair underwent an independent medical examination pursuant to 39-A M.R.S.A. § 312. Prior to the examination, the parties provided the IME with a joint medical stipulation containing Mr. LeClair's medical records, in conformity with Me. W.C.B. Rule, ch. 4 § 2(2)(B). On the date of the appointment, Mr. LeClair hand-carried some additional materials and presented them to a nurse at the IME's office. Mr. LeClair did not retain a copy of the materials, and by the time the parties took the IME's deposition testimony, the IME had discarded the materials. Mr. LeClair testified that he brought the following to his appointment: photocopies of printed materials from his workplace that listed properties and safety precautions for different chemicals, emails from coworkers who were overwhelmed by fumes in the workplace, and pictures of some chemicals.

[¶4] During his deposition, the IME testified that he reviewed the materials that Mr. LeClair brought to their meeting but the materials did not change his opinions. The IME opined that environmental exposures at Twin Rivers were responsible for Mr. LeClair's respiratory condition and need for medical treatment.

[¶5] Twin Rivers filed a motion with the ALJ to exclude the IME's opinion because Mr. LeClair had provided materials to the IME without following procedure set out in Me. W.C.B. Rule, ch. 4 § 3(3). The ALJ denied the motion and issued a decision dated March 10, 2017, in which the ALJ relied upon the IME's causation opinion to grant Mr. LeClair's requested relief. In the decision, the ALJ reasoned that any violation of the board's rules by Mr. LeClair was harmless because the IME testified that the materials brought by Mr. LeClair did not influence his opinion.

[¶6] Following the decision, Twin Rivers did not file a motion for further findings of fact and conclusions of law pursuant to 39-A M.R.S.A. § 318 (Supp. 2017), but instead filed this appeal.

II. DISCUSSION

A. Standard of Review

[¶7] The role of the Appellate Division "is limited to assuring that the [ALJ's] 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) (quotation marks omitted). Because there was no request for further findings after the decision of March 10, 2017, the Appellate Division will treat the board “as having made whatever factual determination could, in accordance with correct legal concepts, support [its] ultimate decision, and we inquire whether on the evidence such factual determinations must be held clearly erroneous.” *Daley v. Spinnaker Indus. Inc.*, 2002 ME 134, ¶ 17, 803 A.2d 446 (citing *Gallant v. Boise Cascade Paper Gr.*, 427 A.2d 976, 977 (Me. 1981)).

B. Admission of the IME’s Report

[¶8] Practice before the Workers’ Compensation Board is “uniquely statutory” and therefore any exercise of the board’s authority must be precisely defined by Title 39-A; there are no powers of “general equity” available upon the request of the parties. *Grubb v. S.D. Warren Co.*, 2003 ME 139, ¶ 19, 837 A.2d 117. Further, the board has “no powers beyond those expressly granted to it by the Legislature, or such as emerge therefrom by implication as necessary and incidental to the full exercise of the powers explicitly granted.” *Wood v. Cives Constr. Corp.*, 438 A.2d 905, 908 (Me. 1981) (superseded by statute on other grounds). The board is not bound by the “rules of evidence observed by courts, but shall observe the rules of privilege recognized by law.” 39-A M.R.S.A. § 309(2)

(Supp. 2017). “The board or its designee shall admit evidence if it is the kind of evidence on which reasonable persons are accustomed to relying on in the conduct of serious affairs.” *Id.*

[¶9] However, rules adopted by the board at the agency level contain a proper procedure for material to go from the parties to an independent medical examiner. Specifically, communications from the parties, besides agreed upon questions and records, must be submitted through the board with a copy to the opposing party. Rule, ch. 4 § 3(3).

[¶10] Twin Rivers argues that it was reversible legal error for the ALJ to admit the IME’s report after Mr. LeClair did not comply with the board’s procedure for providing material to the IME. We disagree. The ALJ evaluated the IME’s report and deposition testimony and expressly found that the materials provided by Mr. LeClair had no impact on the IME’s opinion. This finding was not challenged by a motion for further findings and fact and conclusions of law pursuant to 39-A M.R.S.A. § 318, and therefore must be upheld unless the evidentiary record demonstrates that the finding was clearly erroneous. *See Daley*, 2002 ME 134, ¶ 17. Finding no persuasive evidence to meet this standard on appeal, the ALJ’s finding must stand.

[¶11] In the face of a finding that the objectionable material provided to the IME made no difference in the IME’s expert opinion, we find that no reversible

error occurred here.¹ See *Midland Fiberglass v. L.M. Smith Corp.*, 581 A.2d 402, 403-04 (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).²

III. CONCLUSION

[¶12] Given the finding that the materials provided by Mr. LeClair had no impact on the IME’s medical findings, we find no reversible error in the ALJ’s admission and reliance upon the IME’s report.

The entry is:

The Administrative Law Judge’s decision is affirmed.

¹ At oral argument, counsel for Twin Rivers challenged this finding with the argument that the IME could not persuasively characterize the impact of the materials provided by Mr. LeClair when he did not retain the materials. Given the standard of review in this case where no further findings of fact were requested, we decline to find that the ALJ’s factual determination (that the materials did not impact the IME’s opinion) was clearly erroneous.

² At oral argument, the parties also debated whether it was legal error for the ALJ to admit the IME’s report when the board rules do not provide a sanction for conduct like Mr. LeClair’s. Because any error in admitting the IME’s report was harmless in this case, we do not reach this issue.

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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