CLAIRE VIOLETTE
(Appellant)

v.

EMPLOYMENT SPECIALISTS OF MAINE, INC.
(Appellee)

and

MEMIC
(Insurer)

Conference held: February 2, 2022
Decided: March 29, 2022

PANEL MEMBERS: Administrative Law Judges Pelletier, Elwin, and Rooks
BY: Administrative Law Judge Elwin

[¶1] Claire Violette appeals from a decision of a Workers' Compensation Board administrative law judge (*Knopf, ALJ*) granting in part her Petitions for Award and for Payment of Medical and Related Services. The decision awarded Ms. Violette partial incapacity benefits based on her physical injury and the exacerbation of her preexisting mental condition but denied payment of medical expenses for treatment of post-concussive symptoms. Ms. Violette contends that the ALJ erred by relying on the independent medical examiner's findings that she did not suffer a brain injury and has full time work capacity. We affirm the decision.

I. BACKGROUND

[¶2] Ms. Violette began working for Employment Specialists of Maine (ESM) in December 2017 as a behavior support specialist. Prior to starting work for ESM, she had largely been out of the work force since 1989 due to the physical and psychological effects of a motor vehicle accident.

[¶3] According to her written statement prepared two weeks after the incident, on August 13, 2018, a client threw a shoe at Ms. Violette from about four feet away, striking her on the right side of her jaw, chest, and shoulder at the collarbone. Initially, she complained of a headache, and thereafter, difficulty tilting her head and raising her arm.

[¶4] After being out of work briefly, Ms. Violette returned to work at ESM for eight months. Over time, she complained of additional symptoms, including cognitive, vision, and psychological problems.

[¶5] ESM terminated Ms. Violette on May 2, 2019, when it could no longer accommodate her increasing restrictions, particularly those due to her vision and cognitive complaints. ESM expressed doubt about the truthfulness of these complaints in a "Supervision" note dated May 2, 2019. Ms. Violette was out of work for a couple of weeks before finding a new job cleaning offices.

[¶6] Ms. Violette filed Petitions for Award and for Payment of Medical and Related Services, seeking to establish that she suffered a physical work injury with

psychological sequelae resulting in inability to work more than two hours per day and significant medical expenses.

[¶7] The ALJ found that Ms. Violette sustained a work-related injury and that the employment at EMS aggravated her preexisting physical and mental conditions in a significant manner, and granted the Petitions for Award and for Payment of Medical and Related Services in part. *See* 39-A M.R.S.A. § 201(4). The ALJ limited Ms. Violette's recovery of medical expenses in two ways. The ALJ found that after May 19, 2019, there was no longer a causal relationship between Ms. Violette's pain complaints and the work injury. The ALJ further found that the work injury did not result in a concussion or brain injury and therefore speech therapy, vestibular therapy, neurological treatment, and vision-related treatment were not compensable.

[¶8] Ms. Violette filed a Motion for Additional Findings of Fact and Conclusions of Law. The ALJ granted the motion and issued an amended decree but did not alter the outcome. This appeal followed.

II. DISCUSSION

A. Standard of Review

[¶9] The Appellate Division's role on appeal "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). 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., Inc.*, 2002 ME 134, ¶ 17, 803 A.2d 446 (quotation marks omitted).

B. Medical evidence

[¶10] Ms. Violette contends the ALJ should have rejected the medical findings of Dr. Riley, the independent medical examiner (IME) who examined Ms. Violette pursuant to 39-A M.R.S.A. § 312, and who opined that she did not sustain a concussion as a result of the incident at work.

[¶11] The ALJ is required to adopt the medical findings of an IME "unless there is clear and convincing evidence to the contrary in the record." 39-A M.R.S.A. § 312(7). Clear and convincing evidence is evidence that demonstrates that it is highly probable that a disputed fact is contrary to that found by the examining doctor. *Dubois v. Madison Paper Co.*, 2002 ME 1, ¶ 14, 795 A.2d 696. The Appellate Division may reverse an ALJ's decision based on an IME's findings only if the decision is unsupported by competent evidence and the record discloses no rational basis to support the IME's medical findings. *See Pomerleau v. United Parcel Serv.*,

464 A.2d 206, 209 (Me. 1983); *Dillingham v. Great N. Paper*, Me. W.C.B. No. 15-7, ¶ 3 (App. Div. 2015).

[¶12] Ms. Violette asserts that Dr. Riley is the only provider who opined that her work injury did not cause a concussion, in contrast to her treating providers and therapists (particularly her psychologist Dr. Gervais) who have treated her for post-concussion syndrome with PTSD and anxiety. Ms. Violette suggests that collectively, these providers' opinions constitute clear and convincing evidence contrary to Dr. Riley's findings. We disagree.

[¶13] The ALJ found that Dr. Riley "performed a very thorough review and evaluation and had a clear understanding of Ms. Violette's long and significant physical and psychological history." He diagnosed ". . . anxiety disorder, including elements of panic disorder with agoraphobia, as well as at least some elements of post-traumatic stress disorder and . . . elements of major depressive disorder." Importantly, however, Dr. Riley did not find that Ms. Violette's work injury included a concussion or other head injury.

[¶14] The ALJ provided a number of reasons that the other providers' opinions were insufficient to overcome the statutory weight of Dr. Riley's medical findings. She concluded that no other provider's records demonstrate the "global overview" that Dr. Riley obtained by reviewing all of the prior medical records before rendering his opinion. The ALJ viewed Dr. Riley as more objective than Ms.

Violette's treating providers, particularly Dr. Gervais, whom Ms. Violette describes as her "mentor and guide for [her] missionary work." Moreover, Dr. Gervais's treatment notes were not in the record, which contained only two reports reflecting his conclusions. Additionally, much of Ms. Violette's claimed disability and need for medical treatment is based on subjective complaints, and Dr. Riley's testing called into question the validity of her perceptions.

[¶15] The ALJ adequately explained that the contrary medical evidence in the record was insufficiently clear or convincing to overcome Dr. Riley's opinion. Dr. Riley's medical findings have a rational basis in the record, and the ALJ's decision is supported by competent evidence. Accordingly, we conclude that the ALJ did not err when adopting Dr. Riley's medical findings despite the contrary evidence indicating that Ms. Violette may have suffered a concussion or brain injury.

C. Earning Capacity

[¶16] The ALJ found that Ms. Violette does suffer ongoing earning incapacity as a result of her injury, but is able to earn minimum wage on a full-time basis. Ms. Violette challenges this finding, asserting that she is unable to work more than two hours a day, and even that may be more than she can tolerate. We disagree.

[¶17] The ALJ based her findings regarding Ms. Violette's earning capacity on the IME's medical findings. The ALJ noted that, according to Dr. Riley, there are no objective findings to suggest that work restrictions are warranted as a result

of the work injury. Ms. Violette's own treating providers have not imposed any restrictions based on her physical or psychological complaints, other than to avoid working with combative individuals. Furthermore, Ms. Violette worked for ESM for eight months after the injury, and was working at the time of the hearings, with no limitations on work hours imposed by her treating providers.

[¶18] Because the evidence supports the finding that Ms. Violette retains the ability to earn, and she did not establish that there is any limitation on the number of hours she can work, the ALJ did not err when awarding Ms. Violette partial incapacity benefits based on an imputed full-time, minimum wage-earning capacity.[1]

III. CONCLUSION

[¶19] We conclude that there is ample competent evidence in the record that supports the ALJ's factual findings. The ALJ properly relied on the IME's findings when determining that Ms. Violette's work injury did not include a concussion or brain injury, and that she has an ongoing full-time, minimum wage-earning capacity.

The entry is:

The administrative law judge's decision is affirmed.

[1] In her brief, Ms. Violette also asserts that ESM was negligent in leaving her alone with the patient who threw the shoe at her. However, the Workers' Compensation Act provides that employers who have secured the payment of workers' compensation for their employees are exempt from civil actions for personal injuries, 39-A M.R.S.A. § 104, including actions for negligence. Ms. Violette is therefore limited to the remedies provided in the Act. *See Estate of Kay v. Estate of Wiggins*, 2016 ME 108, ¶ 10, 143 A.3d 1290.

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.

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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