LAURA L. KLEIN
(Appellee)

v.

STATE OF MAINE, DEPARTMENT OF LABOR
(Appellant)

and

STATE OF MAINE WORKERS' COMPENSATION DIVISION
(Insurer)

Conference Held: May 22, 2014
Decided: February 20, 2015

PANEL MEMBERS: Hearing Officers Pelletier, Elwin, and Goodnough
BY: Hearing Officer Pelletier

[¶1] The State of Maine, Department of Labor (DOL) appeals from a decision of a Workers' Compensation Board hearing officer (*McElwee, contract HO*) granting Laura L. Klein's Petition for Payment of Medical and Related Services, filed with respect to a November 17, 2008, work injury. In a prior stage of this litigation, a different hearing officer (*Smith, contract HO*) found as fact that Ms. Klein's mental health symptoms were not a compensable sequela of the work injury. To the extent that the current decree orders payment for treatment for anxiety and depression, it is inconsistent with that finding. We vacate that portion of the hearing officer's decision.

I. BACKGROUND

[¶2] On November 17, 2008, Ms. Klein suffered a work-related injury to her bilateral upper extremities. Her employment terminated in 2010 for reasons unrelated to the work injury. Thereafter, she began to suffer from depression and anxiety. Ms. Klein filed two Petitions for Award: one related to the November 17, 2008, work injury to her arms, and one related to a separate mental stress injury suffered on September 20, 2010, her last day of work with the DOL.

[¶3] In a decree dated December 15, 2011, Hearing Officer Smith denied the petition for award for the September 20, 2010, mental stress injury. He found as fact that Ms. Klein's mental stress condition arose from a "workplace disciplinary action," and therefore, was not compensable. *See* 39-A M.R.S.A. § 201(3) (2001) (specifically designating mental stress claims arising from good faith disciplinary actions by an employer as not compensable).

[¶4] In the same decree, Hearing Officer Smith granted the petition for award for the 2008 work injury in part. He awarded compensation for the physical aspects of that injury, but after extensive discussion of the medical and psychological evidence pertaining to Ms. Klein's mental health condition, he concluded that although she suffered from depression, "*the November 17, 2008 injury is not responsible for Ms. Klein's depression*." (Emphasis added.) Instead, the hearing officer found that Ms. Klein's mental health symptoms all stemmed

from the non-compensable workplace disciplinary action.[1] Dr. Bradford acted as independent medical examiner (IME) pursuant to 39-A M.R.S.A. § 312 (Supp. 2014), but did not provide an opinion related to Ms. Klein's mental health condition as it pertained to her capacity for work. The hearing officer's findings regarding Ms. Klein's mental health condition were based on her medical records and the medical findings of Dr. Attfield, Dr. Lobozzo, and Dr. Gallon.

[¶5] Thereafter, Ms. Klein filed a Petition for Payment of Medical and Related Services. She sought to have her medical treatment connected with the established bilateral upper extremity injury of November 17, 2008, paid for by the DOL. She included medications prescribed for her mental health condition. Dr. Bradford was again appointed as independent medical examiner. In a report dated April 4, 2013, he opined that "[f]rom my review of the records of her psychologist, the depression and anxiety have also been related to her work injury of 2008."

[¶6] Although he acknowledged the previous finding of fact that Ms. Klein's mental health condition was not caused by the 2008 work injury, Hearing Officer McElwee concluded that the doctrine of *res judicata* did not apply in light of the "more recent and uncontested evidence of Dr. Bradford," including the IME's consideration of medical treatment provided after the prior hearing officer

[1] The decision denying the mental stress injury claim of September 20, 2010, is not at issue in this appeal.

decision, and ordered the DOL to pay for medication to treat Ms. Klein's "mental injury."

[¶7] In response to DOL's Motion for Further Findings of Fact and Conclusions of Law, the hearing officer issued further findings but ultimately affirmed his initial decision. This appeal followed.

II. DISCUSSION

[¶8] The DOL contends that despite the IME's contrary medical findings made in the context of litigation on Ms. Klein's Petition for Payment of Medical and Related Services, the hearing officer was bound by the prior finding of fact in the 2011 decree that the 2008 work injury did not cause Ms. Klein's mental condition. We agree.

[¶9] Section 312(7) requires the hearing officer to "adopt the medical findings of the independent medical examiner unless there is clear and convincing evidence to the contrary in the record that does not support the medical findings." However, "valid and final decisions of the Workers' Compensation Board are subject to the general rules of res judicata and issue preclusion, not merely with respect to the decision's ultimate result, but with respect to all factual findings and legal conclusions that form the basis of that decision." *Grubb v. S.D. Warren Co*., 2003 ME 139, ¶ 9, 837 A.2d 117 (citations omitted).

[¶10] The 2011 factual finding that Ms. Klein's mental health condition was not causally related to the 2008 work injury is now "a valid and final decision of the Board [and] is binding on the parties, even if erroneous." *Moore v. City of Portland*, 2004 ME 49, ¶ 10, 845 A.2d 1163; *see also Ervey v. Ne. Log Homes Inc.*, 638 A.2d 709, 710-11 (Me. 1994). The *res judicata* effect of the hearing officer's earlier determination could be overcome only by "comparative medical evidence." *Grubb*, 2003 ME 139, ¶¶ 7-9, 837 A.2d 117. Comparative medical evidence need not come from the same physician who issued the prior medical opinion, as long as the record shows that the more recent examiner was familiar with the previous physician's medical findings. *Van Horn v. Hillcrest Foods, Inc.*, 392 A.2d 52, 54-55 (Me. 1978). "If the second physician is asked to assume, hypothetically, the validity of the findings of the prior examining physician, he may then give his opinion as to whether or not a change in condition has occurred, based on that assumption." *Id.*; *see also See Jackson v. Pratt-Abbott Cleaners*, Me. W.C.B. No. 14-13, ¶¶ 10-11 (App. Div. 2014).

[¶11 Dr. Bradford gave no opinion on Ms. Klein's mental health condition in the prior stage of the litigation, but deferred to the psychologists and psychiatrists. There is no indication in the record that he assumed, consistent with the findings in the 2011 decree, that Ms. Klein suffered no mental health effects due to the 2008 work injury as of 2011, or that he addressed the question whether

there had been a change of medical circumstances since the prior decree. Although Dr. Bradford cites to records from Ms. Klein's treating psychologist that extended "7 months after the last board decision," he does not assess that evidence in terms of how it shows that her medical and mental health condition has changed. The hearing officer adopts Dr. Bradford's opinion because it is uncontested and it relies on the treating psychologist's current records. However, there is no indication that this evidence shows a change from the evidence of causal connection that was previously considered and rejected by the previous hearing officer.

[¶12] Because Dr. Bradford's opinion was not based on a comparative analysis, the hearing officer was barred by the doctrine of *res judicata* from relying on it as a basis to find that Ms. Klein's mental condition is now related to her November 17, 2008, work injury.

III. CONCLUSION

[¶13] The hearing officer was bound by the specific factual finding in the prior decree that Ms. Klein's mental health condition was not causally related to the 2008 work injury. And, in the absence of proof of changed circumstances based on comparative medical evidence, it was error to award payment for medical treatment for Ms. Klein's mental health condition in a subsequent decree.

The entry is:

> To the extent the hearing officer's decision awards medical payments for the employee's mental health condition, it is vacated. In all other respects, the 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. 2014).

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