VALERIE GURNEY
(Appellee)

v.

RUMFORD GROUP HOMES, INC.
(Appellant)

and

MEMIC
(Insurer)

Conference held: September 22, 2016
Decided: November 18, 2016

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

[¶1] Rumford Group Homes, Inc., appeals from a decision of an administrative law judge (*Goodnough, ALJ*) granting Valerie Gurney's Petition for Review and awarding Ms. Gurney partial incapacity benefits at the rate of $107.95 per week. The ALJ, in finding that Ms. Gurney's present incapacity is work-related, construed the medical opinion of Dr. Barkin, a psychiatrist, as supporting Ms. Gurney's claim that she suffered a work-related anxiety condition. Both Dr. Barkin, a psychiatrist, and Dr. Bridgman, a neurologist, evaluated Ms. Gurney pursuant to 39-A M.R.S.A § 312 (Supp. 2015). Rumford Group Homes contends that the ALJ erred by using Dr. Bridgman's report, which was not considered by Dr. Barkin, as contrary evidence on the issue of whether Ms. Gurney suffered a work-related anxiety condition. Rumford Group Homes also argues that the ALJ

violated Me. W.C.B. Rule, ch. 4, § 2(5) by considering the opinion of more than one independent medical examiner per issue.

[¶2] Opinions of an independent medical examiner appointed pursuant to 39-A M.R.S.A. § 312 are entitled to increased weight in claims before an ALJ and must be adopted absent "clear and convincing" evidence to the contrary. 39-A M.R.S.A § 312(7) provides:

> **Weight.** The board shall 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. Contrary evidence does not include medical evidence not considered by the independent medical examiner. The board shall state in writing the reasons for not accepting the medical findings of the independent medical examiner.

The Law Court has interpreted the "clear and convincing evidence to the contrary" standard of section 312(7) to require a showing "that it was highly probable that the record did not support the [independent medical examiner's] medical findings." *Dubois v. Madison Paper, Co*., 2002 ME 1, ¶ 14, 795 A.2d 696, 699-700.

[¶3] Rumford Group Homes contends that the ALJ erred in using Dr. Bridgman's report as "clear and convincing evidence to the contrary" to Dr. Barkin's report, when Dr. Barkin did not consider Dr. Bridgman's report pursuant to section 312(7). We conclude, however, that Dr. Bridgman's report was not contrary to Dr. Barkin's report, as that report was construed by the ALJ. Notably, the ALJ found Dr. Barkin's report to be "somewhat internally inconsistent" and

used other medical reports, including Dr. Bridgman's, to inform his reading of Dr. Barkin's report. This was not an error, but a permissible interpretation of an otherwise somewhat unclear report. *See Thurlow v. Rite Aid of Maine, Inc.*, Me. W.C.B. No. 16-23, ¶ 14 (App. Div. 2016).

[¶4] Rumford Group Homes also contends that the ALJ violated Me. W.C.B. Rule, ch. 4, § 2(5) by having two independent medical examiners address Ms. Gurney's mental condition. We disagree. Dr. Barkin's report was treated as a binding psychiatric opinion under section 312. While the ALJ considered Dr. Bridgman's opinions on Ms. Gurney's mental condition as part of the medical evidence as a whole, he did not give increased weight to those opinions pursuant to section 312. Thus, we find no error. Moreover, the ALJ's decision is supported by competent evidence, involved no misconception of applicable law, and 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).

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. 2015).

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