GAIL M. LEVESQUE
(Appellee)

v.

DAIGLE OIL COMPANY
(Appellant)

and

CROSS INSURANCE TPA, INC.

v.

LOUIS J. PARADIS, INC.
(Appellee)

and

MEMIC
(Insurer)

Conference held: September 21, 2016
Decided: May 9, 2017

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

[¶1] Daigle Oil Company appeals from a decision of a Workers' Compensation Board administrative law judge (*Pelletier, ALJ*) denying its Petitions for Award and for Payment of Medical and Related Services. Daigle Oil sought apportionment from concurrent employer, Louis J. Paradis, Inc., for a gradual work injury allegedly sustained by Gail Levesque. Daigle Oil contends that the ALJ erred when (1) failing to find that Ms. Levesque sustained a gradual

work injury while working at Paradis; (2) determining that Daigle Oil had not met its burden of proof pursuant to 39-A M.R.S.A § 201(4) (2001); and (3) failing to adopt, accurately, the opinion of the independent medical examiner (IME), *see* 39-A M.R.S.A § 312 (Supp. 2016). We disagree with these contentions, and affirm the ALJ's decision.

I. BACKGROUND

[¶2] Gail Levesque worked concurrently for Daigle Oil Company and Louis J. Paradis, Inc. Ms. Levesque's full-time office clerk position at Daigle Oil was sedentary. Her part-time grocery store shift supervisor position at Paradis, however, required her to stock shelves and move light to medium-weight items around the store. Ms. Levesque worked one evening per week and weekends at Paradis.

[¶3] Ms. Levesque had a preexisting condition in her right knee, having undergone arthroscopic surgeries on the knee in 2004 and 2005. It is undisputed that Ms. Levesque sustained a work-related right knee injury at Daigle Oil in March of 2011 when she tore her right menisci after slipping on ice in the parking lot.

[¶4] Ms. Levesque returned to work with both Daigle Oil and Paradis following the injury, missing minimal time. However, her right knee continued to cause her pain, particularly while she was working at Paradis. She underwent an

arthroscopic procedure on her right knee on January 14, 2013. Ms. Levesque was released to work at Daigle Oil a few weeks after the surgery, but was not released to work at Paradis. Because her condition failed to improve, she underwent total knee replacement on May 15, 2014, and was still recovering from that surgery at the time of the hearing. Both surgeries were performed by Dr. Michaud.

[¶5] Ms. Levesque filed Petitions for Award and for Payment of Medical and Related Services against Daigle Oil only, for the March 2011 right knee injury. Daigle Oil then filed its petitions alleging a March 14, 2012, gradual injury to Ms. Levesque's right knee due to her continued work at Paradis.[1] Daigle Oil asserted that the 2012 gradual injury significantly contributed to Ms. Levesque's need for both the arthroscopy in 2013 and the knee replacement in 2014.

[¶6] Ms. Levesque was examined by Dr. Bradford, an independent medical examiner appointed pursuant to 39-A M.R.S.A § 312 (Supp. 2016). Dr. Bradford opined that the 2011 injury "resulted in new trauma to both the medial and lateral menisci of the right knee and may have worsened the preexisting chondromalacia in the right knee." When considering the effects of Ms. Levesque's work at Paradis following the 2011 injury, Dr. Bradford opined that the work did not aggravate, accelerate, or combine with the 2011 injury in a significant manner. In his report, Dr. Bradford stated:

[1] Although Daigle Oil filed a petition for Award and Petition for Payment of Medical and Related Services against Paradis, the underlying issue is apportionment.

> I have placed all responsibility on her recent re-injury on 3/22/11, as responsible for her surgery, and although improved, still having some effects from that injury. . . . [T]he date of 3/14/12, was not a date of injury, but rather simply a follow-up orthopedic appointment with Dr. Michaud.

This was also the view of Ms. Levesque, who did not file any petitions alleging either an acute or gradual injury while working at Paradis.

[¶7] Dr. Bradford was deposed and conceded at his deposition that Ms. Levesque's work at Paradis following the 2011 injury contributed in a "small" or "minor" way to an increase in her symptoms, but did not state that she sustained a new or separate injury in 2012. He testified that his reference to a small or minor contribution could be translated into a 20% contribution from her work at Paradis. During cross-examination, Dr. Bradford testified that such a contribution could be viewed as "significant." However, as noted by the ALJ, "at no point did Dr. Bradford opine that a gradual injury at Paradis made a significant contribution to her need for surgery and consequent disability." The ALJ also noted that the question giving rise to Dr. Bradford's agreement that the contribution could be viewed as "significant" was ambiguous, and he declined to give it weight in his assessment of whether a new "gradual injury from the grocery store duties has made a significant contribution to her disability."

[¶8] The ALJ concluded:

> As a matter of law, not as a matter of disagreement with the IME's findings, I find that [Daigle Oil] has not carried its burden of proof

> under section 201(4) to show that [Ms. Levesque's] part-time work at Paradis after the work injury at [Daigle Oil] contributed to her disability in a significant manner.

Accordingly, the ALJ denied Daigle Oil's petitions. Daigle Oil filed a motion for further findings of fact and conclusions of law, which the ALJ denied. This appeal followed.

II. DISCUSSION

A. Standard of Review

[¶9] 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). Further, an ALJ's determination "that any party has or has not sustained the party's burden of proof . . . is considered a conclusion of law and is reviewable." 39-A M.R.S.A. § 318 (Supp. 2016); *Savage v. Georgia-Pacific Corp.*, Me. W.C.B. No. 13-5, ¶ 7 (App. Div. 2013).

B. Gradual Injury at Paradis

[¶10] Daigle Oil contends that the ALJ erred by failing to make findings regarding whether a gradual injury occurred at Paradis in light of the medical and

legal causation standards set forth in *Bryant v. Masters Machine Co.*, 444 A.2d 329 (Me. 1982), applicable when an employee has a preexisting condition.

[¶11] "When a case appears to come within section 201(4), the [ALJ] must first determine whether the employee has suffered a work-related injury . . . then [section] 201(4) is applied if the employee has a condition that preceded the injury." *Celentano v. Dep't of Corr.*, 2005 ME 125, ¶ 9, 887 A.2d 512. "[I]n a combined effects case, the 'arising out of and in the course of [employment]' requirement is satisfied by a showing of both medical and legal cause." *Id.* at ¶ 12.

[¶12] The ALJ did not engage in a legal causation risk analysis as set forth by the Court in *Bryant*. It is, however, plain that the ALJ considered Dr. Bradford's opinion regarding the medical impact of Ms. Levesque's work at Paradis on the development of a possible gradual injury. As discussed above, while Dr. Bradford opined that Ms. Levesque developed a minor increase in symptoms at Paradis, he never went so far as to suggest that, from a medical causation perspective, the work caused a gradual injury in 2012. We conclude that the decision includes adequate findings on the issue of medical causation given the ALJ's reliance on Dr. Bradford's statements in his report and deposition that there was no new or separate injury on March 14, 2012.

[¶13] Because Daigle Oil did not establish medical causation, the ALJ's failure to engage in a legal causation analysis was not error.[2]

C. The Independent Medical Examiner's Opinion

[¶14] Daigle Oil contends that the ALJ misinterpreted Dr. Bradford's opinion, and erred by failing to fully adopt Dr. Bradford's findings regarding the "contribution" of Ms. Levesque's work at Paradis to her symptoms, her need for surgery, and resulting disability. Daigle Oil contends that Dr. Bradford's deposition testimony, in which he agreed that Ms. Levesque's work at Paradis contributed 20% to her ongoing symptoms, compelled the ALJ to find that Ms. Levesque sustained a new work injury while she was working for Paradis and to apportion 20% towards that injury.

[¶15] An IME's medical findings are entitled to increased weight in claims before an ALJ and specifically must be adopted absent clear and convincing evidence to the contrary. 39-A M.R.S.A. § 312(7) (Supp. 2016). The Law Court has interpreted section 312(7)'s "clear and convincing evidence to the contrary" standard in cases where an ALJ has declined to adopt the findings of the IME to require a showing on appeal "that it was highly probable that the record did not

[2] Daigle Oil also contends that the ALJ erred when determining that it did not meet its burden of proof on the issue of Paradis' liability pursuant to section 201(4). Because we uphold the ALJ's finding that Ms. Levesque did not suffer a gradual injury at Paradis, we do not need to address whether section 201(4) was properly applied. Even if an injury had been found, based on the IME's medical findings, the ALJ determined that Ms. Levesque's employment at Paradis did not contribute to her disability in a significant manner. Thus, there would be no error under section 201(4).

support the IME's medical findings." *Dubois v. Madison Paper, Co*., 2002 ME 1, ¶ 14, 795 A.2d 696. When the ALJ adopts the IME's findings, the ALJ's decision may only be reversed on appeal if the medical examiner's findings are not supported by any competent evidence, or the record discloses no reasonable basis to support the decision. See *Pomerleau*, 464 A.2d at 209.

[¶16] The ALJ here neither rejected nor misinterpreted the IME's medical findings. The ALJ assessed Dr. Bradford's deposition testimony and report as a whole and declined to find that the 20% figure articulated by Dr. Bradford compelled a finding that a new work injury had occurred at Paradis that could be subject to apportionment. The ALJ noted that:

> Dr. Bradford clarified in his testimony that he was not suggesting a new or separate injury at Paradis. . . . Rather, [Ms. Levesque's] symptoms increased after the work injury at [Daigle Oil] because of the work at Paradis.
>
> . . .
>
> While Dr. Bradford ultimately agreed with [Daigle Oil's] counsel that the work at Paradis after the serious injury at [Daigle Oil] was somehow "significant," at no point did Dr. Bradford opine that a gradual injury at Paradis made a significant contribution to her need for surgery and consequent disability. To the contrary, Dr. Bradford repeatedly used words "minor" and "small" to describe the contribution from Paradis, and he emphasized that the work at Paradis did not change the result.

Although the ALJ was ultimately persuaded that Ms. Levesque experienced a minor increase in symptoms as a result of her work at Paradis, this did not compel a finding that Ms. Levesque sustained a gradual injury in 2012.

[¶17] When confronted with potentially ambiguous language in a report from an IME, or when there is ambiguity between an IME's report and deposition testimony, "it is incumbent on the [ALJ] to consider the larger context in which those statements are offered to construe the intent of the examining physician." *Oriol v. Portland Housing Auth.*, Me. W.C.B. No. 14-35, ¶ 12 (App. Div. 2014); *see also Thurlow v. Rite Aid*, Me. W.C.B. No. 16-23, ¶ 13 (App. Div. 2016) (holding that section 312 does not compel the adoption of IME's medical findings when those findings are ambiguous); *Gurney v. Rumford Group Homes*, Me. W.C.B. No. 16-42, ¶ 3 (App. Div. 2016) (holding ALJ's reference to a medical report not provided to IME was permissible when interpreting ambiguous IME findings).

[¶18] The ALJ's interpretation of Dr. Bradford's testimony regarding the lack of sufficient evidence to establish a gradual work injury was preceded by a thorough analysis of the larger context of that testimony. The ultimate finding that there was only one work injury is supported by competent evidence and will therefore not be disturbed on appeal.

III. CONCLUSION

[¶19] The ALJ's finding of a single injury at Daigle Oil is supported by competent evidence. And, finding no medical causation, the ALJ did not err in failing to engage in a legal causation analysis with respect to the alleged gradual

injury at Paradis. Further, the ALJ's evaluation and interpretation of the independent medical examiner's report is neither arbitrary nor without rational foundation.

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).

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