LISA WICKETT
(Appellee)

v.

UNIVERSITY OF MAINE SYSTEM
(Appellant)

and

CCMSI
(Insurer)

Conference held: January 26, 2017
Decided: August 31, 2017

PANEL MEMBERS: Administrative Law Judges Goodnough, Pelletier, and Stovall
BY: Administrative Law Judge Goodnough.

[¶1] The University of Maine System (UMS) appeals from a decision of a Workers' Compensation Board administrative law judge (*Hirtle, ALJ*) granting, in part, Lisa Wickett's Petitions for Award of Compensation and for Payment of Medical and Related Services. UMS argues that the ALJ's decision was not based upon competent evidence, but rather on speculative medical opinions that cannot meet Ms. Wickett's burden of proof. We agree and vacate the decision.

I. BACKGROUND

[¶2] Lisa Wickett fell down a set of icy stairs on December 8, 2014, while working as a culinary associate for the University of Maine. The next day, UMS's chosen medical provider briefly evaluated Ms. Wickett for contusions. Sometime after that visit, Ms. Wickett experienced lower back and abdominal pain. She sought emergency treatment for those symptoms on January 12, 2015.

[¶3] Ms. Wickett was diagnosed with a retroperitoneal mass. She saw a gynecological oncologist, Dr. Soultanakis, who performed a surgery to remove the mass on February 4, 2015. Ms. Wickett was out of work for a recovery period following the surgery.

[¶4] Ms. Wickett filed petitions alleging that her December 8 fall caused her need for surgery. At her hearing, she provided the ALJ with a letter from Dr. Soultanakis who, in response to a question on causation, wrote: "I can only speculate. There was no other etiology for the fluid collection (i.e., ovarian cyst, pelvic abscess, or other gynecologic finding) and the temporal relationship between the time of the injury and her presentation certainly make this a likely possibility." Dr. Soultanakis also noted "the possibility that this could have been related to an injury that may create a collection that secondarily was inspected" and that "[t]he only temporal event in development of this collection was a fall that Ms.

Wickett experienced prior to presentation. Therefore, it is possible that this collection may have resulted from her recent fall."

[¶5] Citing these statements from Dr. Soultanakis, the ALJ concluded that Ms. Wickett met her burden of proving a causal connection between the fall and the surgery to remove her abdominal mass. He accordingly granted Ms. Wickett's Petition for Award of Compensation and Petition for Payment of Medical and Related Services. UMS filed a Motion for Further Findings of Fact and Conclusions of Law, which the ALJ summarily denied. This appeal followed.

II. DISCUSSION

A. Standard of Review

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

B. Burden of Proof

[¶7] As a general matter, the petitioning party bears the burden of persuasion to establish all elements of a claim on a more probable than not basis. *Fernald v. Dexter Shoe Co.*, 670 A.2d 1382, 1385 (Me. 1996). Establishing the compensability of an injury through a petition for award of compensation is no exception. *See Rowe v. Bath Iron Works Corp.*, 428 A.2d 71, 73 (Me. 1981) ("An employee petitioning for an award of compensation . . . has the burden of proof by a preponderance of competent and probative evidence on all essential elements of his claim.").

[¶8] Proof of a causal relationship between an employee's work and his or her injury is an essential element of a Petition for Award of Compensation. *See id.* Except in cases where "causation is clear and obvious to a reasonable [person] who had no medical training[,]" an employee must rely on the opinion of a qualified medical expert to meet his or her burden of proof on the issue of medical causation. *Brawn v. Bangor Tire Co.*, Me. W.C.C. 97, 101 (Me. App. Div. 1983); *see also Dorval v. Andtut, Inc.*, Me. W.C.C. 738, 742 (Me. App. Div. 1992). The determination of causal connection is a question of fact. *See Bruton v. City of Bath*, 432 A.2d 390, 392 (Me. 1981); *Rowe*, 428 A.2d at 73. However, whether a party

has or has not met their burden of proof is reviewable as a question of law. 39-A M.R.S.A. § 318 (Supp. 2016).

[¶9] UMS does not question the legal standard applied by the ALJ in this case, but contends that the evidence upon which he relied, specifically, the comments on causation from Dr. Soultanakis, is insufficient as a matter of law to sustain Ms. Wickett's burden of proof.

[¶10] "[A]lthough slender evidence may be sufficient [to meet a burden of proof], it must be evidence, not speculation, surmise or conjecture." *Grant v. Georgia-Pacific Corp*., 394 A.2d 289, 290 (Me. 1978); *see also Bradbury v. General Foods*, 218 A.2d 673, 674 (Me. 1966) (holding that the Law Court will look only to see that a commissioner's decision "rests on some legally competent and probative evidence and is not merely the result of speculation, conjecture or guesswork.").

[¶11] In *Grant*, for example, an employer attempted to reduce an employee's weekly disability benefits via a petition for review of incapacity. 394 A.2d at 290. The employer argued that the employee had regained his work capacity and, in support, presented the testimony of a physician who said that the employee "may try [some work] without heavy lifting," and that he thought "it may be a good idea for him to try and see what he can do." *Id.* at 290. Such

evidence, the Law Court concluded, was not sufficient as a matter of law to support the employer's burden of proving an increased work capacity. The Court wrote:

> Completely lacking is any showing that [the] physician has concluded [the employee] has in fact any present work capacity. To say it may be a "*good idea for him to try and see what he can do*," is a far cry from saying "*in my opinion, he does have work capacity*." . . . We cannot hold that the physician's expressed thought . . . is sufficient to support a finding of changed circumstance.

Id. at 291 (emphasis in original). Because the medical testimony was insufficient as a matter of law, the Court vacated the commissioner's decision. *Id.*

[¶12] The medical opinion relied upon by the ALJ in this case is similarly flawed. Much like the physician in *Grant*, Dr. Soultanakis did not go so far as to say that Ms. Wickett's work injury *probably* caused her need for surgery; he merely remarked that, in light of the temporal relationship between the two, a causal connection was "a likely possibility." He admitted that he could only "speculate" on the question of causation and noted, without elaboration, that "it is possible that this collection [of fluid] may have resulted from the fall." Like the employer in *Grant*, Ms. Wickett cannot meet her burden of proof with such inconclusive medical opinions. At best, the evidence would be sufficient to prove the possibility—rather than the probability—of causation. One cannot infer more

from Dr. Soultanakis's opinions without engaging in the very kind of conjecture that *Grant* discourages.

[¶13] The ALJ's finding that Ms. Wickett's workplace fall caused her need for surgery is not supported by competent evidence. The issue of medical causation in her case is not so straightforward that it is clear and obvious to someone with no medical training. For that reason, it was incumbent upon Ms. Wickett to present competent medical evidence that demonstrated causation by at least a preponderance of the evidence. She failed to do so.

III. CONCLUSION

[¶14] The ALJ concluded that Ms. Wickett's workplace fall probably caused her need for surgery based on a medical opinion that was speculative and inconclusive. Because the medical evidence in the record does not demonstrate causation by a preponderance of the evidence, Ms. Wickett's petitions must be denied to the extent they seek incapacity or medical benefits related to her retroperitoneal mass.

The entry is:

> The ALJ's decision is vacated except to the extent that Ms. Wickett is awarded the protection of the Act for a contusion injury resulting from the slip and fall on December 8, 2014. The Petition for Payment of Medical and Related Services is denied.

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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