

MARK VOISINE
(Appellee)

v.

STATE OF MAINE,
DEPARTMENT OF TRANSPORTATION
(Appellant)

Argument held: January 26, 2017
Decided: February 2, 2017

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

[¶1] State of Maine, Department of Transportation appeals from a decision of an administrative law judge (*Elwin, ALJ*) granting Mark Voisine's Petitions for Award of Compensation and for Payment of Medical and Related Services. The ALJ concluded that Mr. Voisine suffered a mental injury resulting from work-related stress arising out of and in the course of his work for the Department on February 21, 2013. *See* 39-A M.R.S.A § 201(3) (2001). The ALJ adopted the medical opinion of the independent medical examiner, Dr. Jeffrey Barkin, in finding that Mr. Voisine's mental stress injury was work-related. *See* 39-A M.R.S.A § 312(7) (Supp. 2016). The Department contends that the ALJ erred by

adopting Dr. Barkin’s medical opinion because there is clear and convincing evidence to the contrary in the record.¹ We disagree.

[¶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 the board and must be adopted absent “clear and convincing evidence to the contrary.” 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.

[¶3] Where, as here, an ALJ adopts the findings of the independent medical examiner, the ALJ’s decision may only be reversed on appeal if the independent medical examiner’s findings are not supported by any competent evidence, or the record discloses no reasonable basis to support the decision. *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). Because there is competent evidence in the record to support both Dr. Barkin’s medical opinion and the ALJ’s adoption of that opinion, we find no error.

The entry is:

The administrative law judge’s decision is affirmed.

¹ The Department also argues that if the ALJ’s adoption of Dr. Barkin’s report was in error, Mr. Voisine did not meet his burden pursuant to section 201(3). We do not reach this issue because we find no error.

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).

Attorney for Appellant:
Anne-Marie L. Storey, Esq.
John K. Hamer, Esq.
RUDMAN WINCHELL
P.O. Box 1401
Bangor, ME 04402-1401

Attorney for Appellee:
Christopher Cotnoir, Esq.
WCB ADVOCATE DIVISION
24 Stone Street, Suite #107
Augusta, ME 04330