MELISSA O'BRIEN
(Appellee)

v.

QUINTEL IV COMPANY, LLC, d/b/a MCDONALD'S
(Appellant)

and

CCMSI
(Insurer)

Conferenced: March 16, 2017
Decided: February 14, 2018

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

[¶1] Quintel IV Company, LLC, (hereinafter "Quintel") appeals from a decision of a Workers' Compensation Board Administrative Law Judge (*Jerome, ALJ*) granting Melissa O'Brien's Petition for Award for a gradual low back injury manifesting June 29, 2012. Quintel argues that the ALJ erred by rejecting the medical findings of an independent medical examiner appointed by the board pursuant to 39-A M.R.S.A. § 312 (Supp. 2017). We disagree and affirm the decision.

I. BACKGROUND

[¶2] In a previous round of litigation involving these same parties, Melissa O'Brien filed a Petition for Award contending that she sustained a discrete low

back injury while working for Quintel on September 21, 2011. In a decree issued April 25, 2014, the board (*Jerome, ALJ*) adopted the opinion of the section 312 examiner, who determined that Ms. O'Brien had sustained a low back injury but that the effects of that injury had ended. The ALJ noted that although Ms. O'Brien's back problems persisted, they followed a period of months when she had no complaints stemming from the September 21, 2011, work injury.

[¶3] Shortly after the 2014 decree issued, Ms. O'Brien filed another Petition for Award, this time alleging a gradual injury to her low back and identifying June 29, 2012, as her date of injury. The board sent her to the same section 312 examiner who had examined her as part of the first round of litigation but, contrary to her prior findings, the examiner found that Ms. O'Brien's chronic back problems related to the September 21, 2011, work incident. The examiner opined that Ms. O'Brien's job duties did not cause a gradual injury.

[¶4] The ALJ declined to adopt the examiner's opinion, noting the contradiction between her most recent findings and the findings as adopted by the board in 2014.[1] Instead, the ALJ relied on the opinion of Ms. O'Brien's treating physician to conclude that Ms. O'Brien's work activities over time significantly contributed to her back condition. This appeal followed.

[1] The ALJ determined that the 90-day notice period for the June 29, 2012, injury was tolled by Ms. O'Brien's mistake in believing that her low back problems related to the September 21, 2011, injury. That portion of the decree was not appealed.

II. DISCUSSION

[¶5] Quintel argues that the ALJ erred by declining to adopt the opinion of the board's independent medical examiner. Generally, the board must adopt such an examiner's medical findings "unless there is clear and convincing evidence to the contrary in the record that does not support the medical findings." 39-A M.R.S.A. § 312(7). When an ALJ does not accept an examiner's findings, he or she must state the reasons for not doing so in writing. *Id.*

[¶6] The ALJ gave two reasons for rejecting the most recent findings of its examiner, both of which are valid. First, the ALJ found that the examiner's latest opinion—that Ms. O'Brien's low back condition relates to her 2011 work injury—was "directly contradictory" to her findings during the previous round of litigation—that the effects of the 2011 back injury had ended. The ALJ noted that, with no explanation for the change, the contradiction undercut the credibility of the examiner's opinion. The ALJ was justified in finding that evidence from Ms. O'Brien's treating physician, who opined that Ms. O'Brien's ongoing back condition was the result of her work activity over time, constituted the "clear and convincing evidence" necessary to overcome the enhanced evidentiary weight assigned to medical opinions of a section 312 examiner. *See Leo v. Am. Hoist & Derrick Co.*, 438 A.2d 917, 920–21 (Me. 1981); *Rowe v. Bath Iron Works*, 428 A.2d 71, 74 (Me. 1981); *White v. S.D. Warren Co.*, Me. W.C.B. No. 18-2,

¶ 5 (App. Div. 2018) ("[T]he decision to accept or reject particular expert medical opinions, in whole or in part, is a matter within [the ALJ's] sound discretion.").

[¶7] Second, the ALJ explained that the preclusive effect of the board's 2014 decree prevented her from adopting the independent medical examiner's most recent theory of causation. "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); *see also Allarie v. Jolly Gardener Prods. Inc.*, Me. W.C.B. No. 16-39, ¶ 9 n.3 (App. Div. 2016) (explaining that the law of the case and res judicata doctrines have both been used to test the preclusive effect of findings in a prior decree).

[¶8] Thus, the board's 2014 factual finding that Ms. O'Brien's 2011 low back injury resolved was "binding on the parties, even if erroneous." *Moore v. City of Portland*, 2004 ME 49, ¶10, 845 A.2d 1163. The fact that the present litigation involves a different date of injury does not change the preclusive effect of the 2014 decree. *Larrivee v. Timmons*, 549 A.2d 744, 747 (Me. 1988) ("[W]hen an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a

subsequent action between the parties, whether on the same or a different claim." (quoting Restatement (Second) of Judgments, § 27 (1982))). Therefore, the 2014 decree effectively precluded the board from adopting the independent medical examiner's opinion when doing so would be inconsistent with the prior adjudication.

III. CONCLUSION

[¶9] The ALJ did not err when determining that factual findings made in the board's 2014 decree had preclusive effect in this proceeding. The ALJ correctly rejected the independent medical examiner's most recent opinion insofar as it contradicted both her earlier report and the 2014 decree. The ALJ's decision reflects no misconception of the applicable law, and her 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. 2017).

Pursuant to board Rule, chapter 12, § 19, all evidence and transcripts in this matter may be destroyed by the board 60 days after the expiration of the time for appeal set forth in 39-A M.R.S.A. § 322 unless (1) the board receives written notification that one or both parties wish to have their exhibits returned to them, or (2) a petition for appellate review is filed with the law court. Evidence and transcripts in cases that are appealed to the law court may be destroyed 60 days after the law court denies appellate review or issues an opinion.

Attorney for Appellant:
Mark A. Cloutier, Esq.
CLOUTIER, CONLEY & DUFFETT, P.A.
465 Congress St.
Portland, ME 04101

Attorney for Appellee:
James J. MacAdam, Esq.
Nathan A. Jury, Esq.
Donald M. Murphy, Esq.
MACADAM JURY, P.A.
45 Mallett Drive
Freeport, ME 04032