EILEEN McLAUGHLIN
(Appellant)

v.

COMMUNITY LIVING ASSOCIATION
(Appellee)

and

MEMIC
(Insurer)

Argument held: April 10, 2019
Decided: May 6, 2019

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

[¶1] Eileen McLaughlin appeals from a decision of a Workers' Compensation Board administrative law judge (*Pelletier, ALJ*) awarding her the protection of the Workers' Compensation Act for a March 20, 2011, work injury, but otherwise denying her Petitions for Award of Compensation and for Payment of Medical and Related Services. Ms. McLaughlin contends that the medical evidence compels the conclusion that she suffers ongoing total incapacity due to her work injury, and that the ALJ erred by considering only part of the medical record. She also argues that the process leading up to her hearing was unfair because the mediator had a conflict of interest; and that she received ineffective assistance from the board's advocate division. After careful review of the law and the evidentiary record, we affirm the decision.

I. BACKGROUND

[¶2] Eileen McLaughlin is a registered nurse who worked for Community Living Associates (CLA), a residential facility for people with developmental disabilities. She sustained an injury on March 20, 2011, when a resident assaulted her by pulling her hair, jerking her head around, and punching her in the left cheek. She was treated at the emergency room, and diagnosed with a cervical sprain, bruised left cheek, and trapezius sprain. According to the ER doctor, Ms. McLaughlin was alert and able to give a clear history on examination. She was not admitted to the hospital or taken out of work. Thereafter, she treated with TAMC Occupational Health, and was placed on modified duty, restricting her from overhead lifting and restraining patients. She underwent an MRI in May of 2011, which showed no nerve root impingement at any level. She was referred to physical therapy. The physical therapist found no significant findings correlating with Ms. McLaughlin's subjective complaints, and released her to a home therapy program on June 8, 2011.

[¶3] Ms. McLaughlin continued to treat for neck and back pain, which included periodic steroid injections, physical therapy, and medications. On June 17, 2016, she underwent a surgical discectomy at C5-6, to alleviate neck pain. On May 8, 2017, she filed her petitions with the board, seeking total compensation for lost wages and payment of her medical expenses.

[¶4] The ALJ found that although Ms. McLaughlin sustained a work-related injury on March 20, 2011, that injury consisted of a back and neck strain that had resolved as of July 8, 2011. Thus, he determined that any incapacity and medical expenses incurred after July 8, 2011, are not related to the work injury and are not compensable. He based his findings on medical records that were created close in time to the date of injury, which he determined most accurately reflected the effects of the work injury. Among other providers, the ALJ specifically credited the medical findings of Dr. Anderson and Dr. Keller.

[¶5] Dr. Anderson examined Ms. McLaughlin at Houlton Regional Hospital on June 10, 2011, and diagnosed musculoskeletal pain without radicular symptoms. He reviewed her MRI and recorded that it showed no pathology or concern to suggest that surgery was indicated.

[¶6] Dr. Keller examined Ms. McLaughlin on July 8, 2011, at CLA's request, pursuant to 39-A M.R.S.A. § 207 (Supp. 2018). Dr. Keller opined that the work injury caused minor injuries of the cervical and lumbar spine, and that the MRI findings were not significant. He noted no evidence of neurologic abnormalities.

[¶7] Both Drs. Anderson and Keller noted that Ms. McLaughlin exhibited significant emotional distress and anxiety, but that from a physical standpoint, the effects of the work injury had resolved. The ALJ also expressly stated in his findings that Ms. McLaughlin was not a credible witness.

[¶8] Ms. McLaughlin filed a Motion for Additional Findings of Fact and Conclusions of Law, which the ALJ denied. Ms. McLaughlin appeals.

II. DISCUSSION

A. Standard of Review

[¶9] The role of the Appellate Division "is limited to assuring that the [ALJ's] 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) (quotation marks omitted). Because Ms. McLaughlin requested findings of fact and conclusions of law following the decision, the Appellate Division may "review only the factual findings actually made and the legal standards actually applied by the [ALJ]." *Daley v. Spinnaker Indus., Inc.*, 2002 ME 134, ¶ 17, 803 A.2d 446.

B. Competent Evidence

[¶10] Ms. McLaughlin contends that the evidence presented to the ALJ compelled a finding that her ongoing symptoms and total incapacity are attributable to the injury she sustained at work. She asserts that the ALJ improperly focused on her medical records from the date of injury up until July 8, 2011, and ignored medical records that show that a more serious medical condition developed over time. We disagree.

[¶11] The ALJ evaluated the evidence and made a judgment that the medical records close in time to the date of injury most accurately reflect the effects and extent of that injury. Implicit in that judgment is the corollary that the medical records after July 8, 2011, reflect medical problems that, on a more probable than not basis, were not caused by the incident at work. This type of judgment regarding the significance to attach to particular evidence or exhibits is within the ALJ's purview, and we defer to that judgment. *See* Donald G. Alexander, *Maine Appellate Practice* at 257 (4th ed. 2013).

[¶12] Further, we have reviewed the evidence identified by Ms. McLaughlin that supports her position that the effects of the injury were more serious and prolonged. However, there is also competent evidence in the record that supports the factual finding reached by the ALJ that the effects of the injury were less serious and short-lived. The ALJ, as the fact-finder and sole judge of the credibility of witnesses, was well within his authority to choose between conflicting versions of the facts, and we find no reversible error in the ALJ's decision to credit the early medical records in this case. *See Mailman's Case,* 118 Me. 172, 177, 106 A. 606, 608 (1919) ("If there is direct testimony which, standing alone and uncontradicted, would justify the decree there is [sufficient] evidence, notwithstanding its contradiction by other evidence of much greater weight."). Moreover, the ALJ heard from the witness first hand and was therefore in a better position than this panel to judge the credibility of

the witness and weigh competing factual evidence. *See Boober v. Great N. Paper Co.*, 398 A.2d 371, 375 (Me. 1979) (stating that when conflicting evidence and credibility are at issue, it is for the [ALJ], who "had the opportunity to hear the witnesses and judge their credibility . . . to resolve the evidentiary conflicts in the case.") (quoting *Lovejoy v. Beech Hill Dry Wall Co., Inc.*, 361 A.2d 252, 254 (Me. 1976)). Because there is competent evidence in the record that supports the ALJ's factual findings, we discern no error.

C. Conflicts and Representation

[¶13] Ms. McLaughlin contends that the process afforded her by the board was unfair because the mediator involved in her case had a conflict of interest. She asserts that the mediator previously worked for CLA's insurer and had adjusted her claim when it was initially filed. This contention, however, does not rise to reversible error at the appellate level. Ms. McLaughlin was represented by counsel at the mediation, and there is no indication on the mediation record that an objection was made at the time. The record does indicate that the mediation was unsuccessful, and that the case proceeded to the formal hearing process. *See* 39-A M.R.S.A. §§ 313, 315 (Supp. 2018).

[¶14] By statute, the Appellate Division is tasked with reviewing administrative law judge decisions for errors of law, after the formal hearing process is complete. 39-A M.R.S.A. § 321-B(3) (Supp. 2018) ("The division, after due

consideration, may affirm, vacate, remand or modify a decree of an administrative law judge and shall issue a written decision."); *id.* at § 318 (Supp. 2018) ("The administrative law judge's decision, in the absence of fraud, on all questions of fact is final."). The record does not demonstrate that any defect in the mediation process had an impact on the outcome of the formal hearing. Thus, we find no reversible error.

[¶15] Ms. McLaughlin also contends that the attorney from the board's advocate division, who represented her at her hearing, did not provide effective legal assistance. However, ineffective assistance of counsel does not constitute a basis for reversal in civil matters, except in certain circumstances when the claimant's liberty is at risk. *See, e.g.*, *Nelson v. Boeing Co.*, 446 F.3d 1118, 1121 (10th Cir. 2006) (holding that the statutory right to request assistance of counsel under Title VII does not create corresponding right to effective assistance of counsel).

[¶16] Moreover, Ms. McLaughlin, when unsatisfied with her advocate's work, submitted a supplemental position paper herself, which contained an extensive list of medical records that she contended supported her position of ongoing causation and total incapacity. She also prepared and submitted her Motion for Findings of Fact and Conclusions of Law and proposed findings that very thoroughly marshalled the evidence in support of her contentions. Under these circumstances, it is highly probable that any alleged deficiency on counsel's part did not affect the

outcome of the case. *See Cote v. Osteopathic Hosp. of Me.*, 432 A.2d 1301, 1307 (Me. 1981) (applying harmless error standard in workers' compensation context).

III. CONCLUSION

[¶17] Because resolution of conflicts in the evidence is within the province of the ALJ, there is competent evidence in the record that supports the ALJ's factual findings, and the ALJ neither misapplied nor misconstrued the law, we affirm the decision.

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. 2018).

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.

Appellant:
Eileen McLaughlin
P.O. Box 1101
Houlton, ME 04730

Attorney for Appellee:
Chelsea A. Suvlu, Esq.
TUCKER LAW GROUP
P.O. Box 696
Bangor, ME 04402