LENNA ST. LOUIS
(Appellee)

v.

ACADIA HOSPITAL CORPORATION
(Appellant)

Argued: February 7, 2018
Decided: August 19, 2019

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

[¶1] Acadia Hospital appeals from a decision of a Workers' Compensation Board administrative law judge (*Hirtle, ALJ*) dated April 14, 2017, granting Lenna St. Louis's Petitions for Award and finding that Acadia did not demonstrate on a more probable than not basis that Ms. St. Louis refused a job offer without good and reasonable cause under 39-A M.R.S.A. § 214(1)(A) (Supp. 2018). Acadia contends that the evidence compels the conclusion that Ms. St. Louis did not have sufficient cause to refuse the offer. We affirm the decision.

I. BACKGROUND

[¶2] Ms. St. Louis worked as a CNA for Acadia. She was injured on January 29, 2010, when she was assaulted by a patient who struck her in the head. That injury resulted in persistent, post-concussive headaches and in "an anxiety disorder with features of PTSD," as established by a prior board decree dated March 4, 2015 (*Greene, HO*). Ms. St. Louis continued to work for Acadia until August 5, 2013. The

board found in 2015 that at the time she stopped work she was "unable to continue working for the employer because of her anxiety disorder, a sequela, in part, of the January 29, 2010, work-related injury."

[¶3] Ms. St. Louis was hired to be a cashier at a grocery store on February 10, 2014, at a rate of $8.00 per hour. At about the same time, Acadia mailed a letter to Ms. St. Louis offering her a job as a telephone operator and receptionist, a job which would have paid more than $12.00 per hour. Although the letter was mailed before she accepted her new job, the board in 2015 found that she did not receive the offer until afterward. Ms. St. Louis rejected the job offer.

[¶4] In the earlier round of litigation, Ms. St. Louis filed a Petition for Award. Acadia argued that Ms. St. Louis was not entitled to wage loss benefits under 39-A M.R.S.A. § 214(1)(A) because she had refused a bona fide offer of employment without good and reasonable cause.[1] The hearing officer disagreed, concluding that Ms. St. Louis's cause for refusal was valid, citing the sole reason as the fact that she had a new job. Acadia appealed, and the Appellate Division remanded the case for full consideration of the factors set forth by the Law Court in in *Thompson v. Claw Island Foods*, 1998 ME 101, 713 A.2d 316. *See St. Louis v. Acadia Hospital Corp.*,

[1] Title 39-A M.R.S.A. § 214(1)(A) reads:

> **A.** If an employee receives a bona fide offer of reasonable employment from the previous employer or another employer or through the Bureau of Employment Services and the employee refuses that employment without good and reasonable cause, the employee is considered to have voluntarily withdrawn from the work force and is no longer entitled to any wage loss benefits under this Act during the period of the refusal.

Me. W.C.B. No. 17-3, ¶ 6 (App. Div. 2017). The non-exhaustive list of factors includes:

> (1) the timing of the offer, (2) if the employee has moved, the reasons for moving, (3) the diligence of the employee in trying to return to work, (4) whether the employee has actually returned to work with some other employer and, (5) whether the effort, risk, sacrifice or expense is such that a reasonable person would not accept the offer.

Thompson, 1998 ME 101, ¶ 18, 713 A.2d 316 (quoting *Pulver v. Dundee Cement Co.*, 515 N.W.2d 728, 735 (Mich. 1994)).

[¶5] On remand, the ALJ (*Hirtle, ALJ*) analyzed Ms. St. Louis's refusal in reference to the *Thompson* factors. Acadia bore the burden of proof on the issue of whether Ms. St. Louis's refusal was reasonable. *Avramovic v. R.C. Moore Transp., Inc.*, 2008 ME 140, ¶¶ 13-14, 954 A.2d 449. The ALJ noted that Ms. St. Louis had performed only a short work search but quickly found a job through that search, concluding that "[t]he issue of her diligence in trying to return to work is thus mixed." He also acknowledged, as the prior hearing officer had done, that she had returned to work with a new job. Finally, the ALJ put significant focus on the "risk, sacrifice, or expense" factor, which he considered to include risk of re-injury. He cited the opinions of two independent medical examiners—Drs. Voss and Woelflein—in analyzing Ms. St. Louis's "ability to return to work for the Employer." The ALJ ultimately concluded that "the balance of factors is such that the Employer has not met its burden" of showing that the refusal was unreasonable.

[¶6] The ALJ granted Ms. St. Louis's Petition for Award and awarded ongoing incapacity benefits for the January 29, 2010, injury. Acadia moved for additional findings and conclusions pursuant to 39-A M.R.S.A. § 318 (Supp. 2018), which the ALJ granted in part without altering the findings or conclusions relevant to this appeal.

II. DISCUSSION

[¶7] "A finding of fact by an administrative law judge is not subject to appeal [before the Appellate Division]." 39-A M.R.S.A. § 321-B (Supp. 2018). Appellate review is "limited to assuring that [the ALJ's] factual findings are supported by competent evidence . . . ." *Hall v. State*, 441 A.2d 1019, 1021 (Me. 1982). An appellant who had a burden of proof below may successfully challenge an ALJ's conclusion on that burden only if they can show that a contrary conclusion was compelled by the evidence. *Efstathiou v. Efstathiou*, 2009 ME 107, ¶ 10, 982 A.2d 339; *see* 39-A M.R.S.A. § 318; *Savage v. Georgia Pacific Corp*, Me. W.C.B. No. 13-5, ¶ 7 (App. Div. 2014). When a party requests and proposes additional findings of fact and conclusions of law pursuant to section 318, as in this case, "we 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 (quotation marks omitted).

[¶8] Acadia disputes the ALJ's conclusion that Ms. St. Louis had reasonable cause to refuse its offer of employment. It argues that the evidence in this case compels the conclusion that Ms. St. Louis refused its employment offer without reasonable cause. *See Efstathiou*, 2009 ME 107, ¶ 10, 982 A.2d 339. Specifically, Acadia contends (1) that the ALJ improperly focused on the fact that Ms. St. Louis had accepted another job, (2) that Dr. Woelflein's opinion on the job offer had no probative value, and (3) that Dr. Voss's opinion was misinterpreted by the ALJ and does not support the conclusion. We disagree that a contrary conclusion was compelled by this evidence.

[¶9] "It is left to the sound discretion of the factfinder to carefully examine the facts and circumstances of each case to determine what is good and reasonable cause in any given situation." *Thompson,* 1998 ME 101, ¶ 19, 713 A.2d 316 (quoting *Pulver*, 515 N.W.2d at 735). In this case, the ALJ reasonably assigned weight to the fact that Ms. St. Louis would have been required to "abandon" her new job. While a different fact finder may have evaluated that fact differently, we cannot say the ALJ's evaluation was unreasonable. Furthermore, it was not unreasonable for the ALJ to rely on the opinions of Drs. Voss and Woelflein. In particular, Dr. Voss's opinion was given with full knowledge of the job offered. In his opinion, he wrote:

> Although she would be at a secured area, she would have to deal regularly with people coming for outpatient appointments and visitors. She would have to take lunch in the cafeteria which is used by patients,

> some of whom may be assaultive. She would have to leave the building through an area where patients might be.

[¶10] When asked directly whether the job offered was suitable, Dr. Voss wrote that "Ms. St. Louis has a high degree of anxiety if she considers return to work in a setting where there is increased risk for being assaulted, such as in Acadia Hospital . . . ." He concluded that return to work there "is medically contraindicated," citing anxiety and panic attacks. This evidence and other evidence provides a reasonable basis for the ALJ's conclusion that Ms. St. Louis's refusal of the job offer was done with good and reasonable cause.

[¶11] Because the ALJ's findings are supported by competent evidence, and because his application of the law to the facts was neither arbitrary nor without rational foundation, we do not disturb his conclusions. *See 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. 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.

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