JOYCE M. STEIN
(Appellee)

v.

INLAND HOSPITAL
(Appellant)

and

EASTERN MAINE GROUP
(Insurer)

Argued: June 13, 2018
Decided: November 26, 2019

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

[¶1] Inland Hospital appeals from a decision of a Workers' Compensation Board Administrative Law Judge (*Elwin, ALJ*) granting Joyce M. Stein's Petition for Award for a June 5, 2014, work injury.[1] The Hospital contends that the ALJ erred when: concluding that the Hospital did not rebut the evidentiary presumption afforded in 39-A M.R.S.A. § 327 (2001); failing to properly apply the legal standard applicable to preexisting conditions in 39-A M.R.S.A. § 201(4) (Supp. 2018); and denying the Hospital an offset pursuant to 39-A M.R.S.A. § 221 (Supp. 2018). We affirm the decision.

[1] The ALJ also denied a Petition for Award alleging a December 18, 2014, work injury. That decision has not been appealed.

I. BACKGROUND

[¶2] Joyce Stein began working for Inland Hospital as an obstetrician/ gynecologist in 2006. In December 2013, Anthem notified Dr. Stein that it planned to terminate her participation in its network because of her lack of board certification, which would have prevented the Hospital from billing for her services. After her supervisor intervened, Anthem notified Dr. Stein that she could continue to participate in the network contingent upon taking and passing the May 2014 board exam. When she failed to pass, Anthem informed her that she could no longer be part of its network.

[¶3] Additional concerns were raised regarding Dr. Stein's performance, and her supervisor considered that she may have been experiencing a physical or psychological problem that was impairing her work. In June 2014, the Hospital put Dr. Stein on administrative leave, and she was suspended from practice pending a fitness-for-duty examination. Dr. Stein became distraught and began to experience stress-driven symptoms, including episodes of high blood pressure.

[¶4] As of August 19, 2014, Dr. Stein was told that her contract with the Hospital was not being renewed. She entered negotiations through her attorney to reach acceptable terms for her separation, which became effective September 1, 2014, and included a one-time severance payment. She began to focus on preparing to retake the medical boards in October 2014 and continued to treat with

a psychologist. She suffered a stroke on December 18, 2014. Among other things, the stroke limited her mobility and ability to communicate.

[¶5] Dr. Stein filed her Petitions for Award, alleging two dates of injury: June 5, 2014, the date she was suspended pending a fitness-for-duty exam, and December 18, 2014, the date of her stroke. She asserted that workplace stress, specifically her suspension by the Hospital, the referral for a fitness-for-duty exam, non-renewal of her employment contract, and various communications from the Hospital, led to increased stress, episodes of high blood pressure and other medical symptoms, and eventually, to her hemorrhagic stroke. Dr. Seder, Dr. Stein's treating physician, stated that her stroke was caused by "situational hypertension," or surges in blood pressure that were due to work-related stress.

[¶6] Because she was unable to testify, Dr. Stein was afforded the evidentiary presumption that, among other things, her injury arose out of and in the course of employment. 39-A M.R.S.A. § 327 (2001). The Hospital attempted to rebut the presumption with evidence that the stroke was not work-related. It also contended that Dr. Stein did not establish a compensable aggravation of a preexisting condition pursuant to 39-A M.R.S.A. § 201(4), and that it was entitled to an offset against any award for the severance payment, pursuant to 39-A M.R.S.A. § 221.

[¶7] The ALJ determined that the Hospital failed to rebut the presumption, and granted the petition for the June 5, 2014, date of injury, awarding Dr. Stein

ongoing total incapacity benefits. The ALJ initially granted the Hospital an offset for the severance payment. After both parties filed Motions for Additional Findings of Fact and Conclusions of Law, *see* 39-A M.R.S.A. § 319 (Supp. 2018), the ALJ issued an amended decree generally consistent with the original decree, except that it denied the offset for the severance payment. The Hospital appeals.

II. DISCUSSION

[¶8] The Appellate Division's role on appeal "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." *Pomerleau v. United Parcel Serv.*, 464 A.2d 206, 209 (Me. 1983) (quotation marks omitted).

A. Title 39-A M.R.S.A. § 327 Presumption

[¶9] Title 39-A M.R.S.A. § 327 provides:

> In any claim for compensation, when the employee has been killed or is physically or mentally unable to testify, there is a rebuttable presumption that the employee received a personal injury arising out of and in the course of employment, that sufficient notice of the injury has been given and that the injury or death was not occasioned by the willful intention of the employee to injure or kill the employee or another.

[¶10] When an employee meets the statutory prerequisites for the presumption, the burden of proof shifts to the employer to prove the non-existence of the presumed facts by a more probable than not standard. *See Morrison v. City of Sanford*, Me. W.C.B. No. 19-22, ¶ 23 (App. Div. 2019); *Lavalle v. Town of Bridgton*,

Me. W.C.B. No. 15-13, ¶ 13 (App. Div. 2015). The Hospital does not dispute that the presumption applies and that it bore the burden to rebut the presumed facts.

[¶11] The Hospital contends that the ALJ erred when determining that it failed to rebut the presumed fact that the injury arose in the course of employment because it demonstrated that Dr. Stein did not experience any specific work injury as of her last day of work on June 5, 2014. Moreover, the employment relationship ended on September 1, 2014, and her stroke did not occur until December 18, 2014.

[¶12] "An injury arises out of and in the course of employment when there is a sufficient connection between the injury and the employment." *Celentano v. Dep't of Corr.*, 2005 ME 125, ¶ 9, 887 A.2d 512 (citing *Comeau v. Me. Coastal Servs.*, 449 A.2d 362, 366-67 (Me. 1982)). An injury occurs "'in the course of employment when it occurs within the period of employment at a place where the employee reasonably may be in the performance of [the employee's] duties and while [the employee] is fulfilling those duties or engaged in something incidental thereto.'" *Comeau*, 449 A.2d at 365 (quoting *Fournier's Case*, 120 Me. 236, 240, 113 A. 270, 272 (1921)). An injury "arises out of" employment when there is "'some causal connection between the conditions under which the employee worked and the injury which arose, or that the injury, in some proximate way, had its origin, its source, its cause in the employment.'" *Comeau*, 449 A.2d at 365 (quoting *Barrett v. Herbert Eng'g, Inc.*, 371 A.2d 633, 636 (Me. 1977)).

[¶13] The ALJ found that:

> [H]er suspension from Inland Hospital was extremely stressful to Dr. Stein, who derived not only her income but her primary source of identity (according to her psychologist) from her work as an obstetrician/gynecologist. An injury may still be compensable if workplace stress causes a disabling condition (such as a heart attack) after the employee leaves work. The Appellate Division [has] rejected the argument that legal causation was not established because these injuries did not occur in the course of employment, citing Professor Larson's distinction between the *origin* of an injury and the *completion* or *manifestation* of that injury. "Any other result would, we believe, be contrary to the intent of our system: to compensate employees for injuries caused by their employment." *See, Stephens v. Grand City*, W.C.App.Div., 88-252; *Ebbett v. Georgia-Pacific*, W.C.App.Div., 92-208. *See also, Moore v. Daigle & Daigle, Inc*., W.C.App.Div., 88-232.

Thus, the ALJ concluded that the Hospital failed to rebut the presumed fact that the injury arose in the course of employment.

[¶14] The Hospital argues that the authorities cited by the ALJ involved cases in which the period between when the employee last worked and the occurrence of the injury was much shorter. Thus, it contends that it demonstrated that there was insufficient temporal proximity between the employment and Dr. Stein's injury.

[¶15] We disagree. The ALJ's decision is based on the "delayed action" theory of work-connection articulated by Professor Larson:

> "Arising" connotes origin, not completion or manifestation. If, for example, a strain occurs during employment hours which produces no symptoms, and the claimant suffers a heart attack or other injury as a result some time after working hours, the injury is routinely held compensable. . . . If, in the language of Justice Cardozo, the injurious incident . . . "from origin to ending must be taken to be one," it should

> be sufficient that the origin of this single unit of injury lies within the bounds of employment, whether the ending, in the form of the actual impact, falls within those bounds or not.

3 Arthur Larson, Lex K. Larson & Thomas A. Robinson, *Larson's Workers' Compensation Law*, § 29.03 (2019) (footnotes omitted); *see also Sanders v. Kenkev*, W.C.B. 08-02-86-29 (Me. 2012) (holding that a gunshot injury that occurred off premises several months after the instigating incident was compensable based on a delayed action theory).

[¶16] We agree with the ALJ's analysis. The ALJ found that the work-related stress that contributed to Dr. Stein's stroke began in December 2013 when she was informed by Anthem that it would no longer be able to bill for her services due to her lack of board certification. It continued when her employment became conditioned on taking and passing the medical board exam in May 2014, which she failed. The ALJ found that Dr. Stein was under tremendous stress in the entire year before her stroke, and some of the physical symptoms of that stress that ultimately caused her stroke, including incidents of high blood pressure, began before she left her employment with the Hospital.

[¶17] The finding that the injury originated while Dr. Stein was employed, and completed or fully manifested thereafter, is supported by competent evidence. The ALJ did not err when concluding that that the Hospital did not rebut the presumption that the injury arose out of and in the course of employment.

B. Title 39-A M.R.S.A. § 201(4), Preexisting Condition

[¶18] Dr. Stein suffered from preexisting conditions that included atherosclerotic blood vessels. Accordingly, Dr. Stein had the burden of proving that her employment contributed to her disability in a significant manner. 39-A M.R.S.A. § 201(4).[2] The ALJ concluded that Dr. Stein met this burden with evidence, as noted above, that she experienced significant work-related stress in the year leading up to her stroke. The ALJ specifically relied on Dr. Seder's observation that Dr. Stein's hypertensive surges, which caused the stroke, were related to her work stress.

[¶19] The Hospital contends this was error because the medical evidence does not link any specific incidents of hypertension with specific work-related events, particularly while Dr. Stein remained employed. We disagree. The record contains abundant evidence that Dr. Stein was under stress due to her employment situation in the year leading up to her stroke. The medical evidence linking that stress to high blood pressure that in turn, aggravated her atherosclerotic condition, provides a sufficient basis for a finding that the employment contributed to Dr. Stein's disability in a significant manner. *Cf. Celentano*, 2005 ME 125, ¶ 18 (determining

[2] Title 39-A M.R.S.A. § 201(4) provides:

> If a work-related injury aggravates, accelerates or combines with a preexisting physical condition, any resulting disability is compensable only if contributed to by the employment in a significant manner.

that a trivial incident constituted employment activity that contributed in a significant manner to disability).

C. Offset for Severance Payment

[¶20] The Hospital contends that the ALJ erred by failing to coordinate the severance pay Dr. Stein received with the award of workers' compensation benefits. We disagree.

[¶21] Title 39-A M.R.S.A. § 221(3) provides, in relevant part:

> **A.** The employer's obligation to pay or cause to be paid weekly benefits other than benefits under section 212, subsection 2 or 3 is reduced by the following amounts:
> . . .
>
> > (2) The after-tax amount of the payments received or being received under a self-insurance plan or a wage continuation plan or under a disability insurance policy provided by the same employer from whom benefits under section 212 or 213 are received if the employee did not contribute directly to the plan or to the payment of premiums regarding the disability insurance policy.

[¶22] The Law Court has defined wage continuation plan as "a plan that is intended to replace an employee's wages during a period of disability." *Gendreau v. Tri-Cmty. Recycling*, 1998 ME 19, ¶ 7, 705 A.2d 1106. The test for determining whether severance payments—payments made in exchange for an employee's agreement to terminate employment—constitute a wage continuation plan is whether "the essential purpose and character of the benefits are for wage

replacement during a period of work-related incapacity." *Daley v. Spinnaker Indus., Inc.*, 2002 ME 134, ¶¶ 8-9, 803 A.2d 446 (quotation marks omitted).

[¶23] The ALJ found as fact that the one-time severance payment was made in conjunction with the settlement that resulted in Dr. Stein's resignation, and that she was not incapacitated at that time. Accordingly, the ALJ concluded that the severance payment was not intended to replace wages during a period of disability and was not subject to offset.

[¶24] The ALJ made findings regarding purpose and character of the severance payment that is supported by competent evidence. The ALJ neither misconceived nor misconstrued the law when denying the offset.

III. CONCLUSION

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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