DONALD M. OAKES
(Appellant)

v.

DON'S STOVE SHOP
(Appellee)

and

MAINE EMPLOYERS' MUTUAL INSURANCE COMPANY
(Insurer)

Conference held: December 13, 2018
Decided: January 6, 2021

Panel Members: Administrative Law Judges Pelletier, Hirtle and Stovall
By: Administrative Law Judge Pelletier

[¶1] Donald Oakes appeals from a decision of a Workers' Compensation Board administrative law judge (*Elwin, ALJ*) granting his Petitions for Award and for Payment of Medical and Related Services in part. The ALJ granted the petitions as they relate to an October 14, 2013, left knee injury, but denied claims related to an alleged right knee sequela. Mr. Oakes contends, based on the evidence, that the ALJ was compelled to find that his work-related left knee condition caused his subsequent right knee condition. We disagree and affirm the decision.

I. BACKGROUND

[¶2] Donald Oakes is self-employed and does business as Don's Stove Shop. On October 14, 2013, he suffered a compensable left knee injury while crawling through the basement window of a customer's home. An MRI revealed a torn medial

meniscus. Due to a deep venous thrombosis (DVT) in his left calf, left knee surgery was delayed so the DVT could be treated. Mr. Oakes underwent surgery on his left knee on March 18, 2014, and April 3, 2015.

[¶3] While recovering from his left knee surgery, Mr. Oakes developed problems with his right leg, including a DVT in his groin and a torn meniscus in his right knee. On January 6, 2016, Mr. Oakes underwent surgery on his right knee to repair the torn medial meniscus.[1] Mr. Oakes asserts that his right knee problems were caused by compensatory stress on his right leg during recovery periods after the left knee surgeries.

[¶4] Mr. Oakes had undergone a prior right knee arthroscopy in 2007, and his orthopaedic surgeon, Benjamin Huffard, M.D., opined that he had sustained significant arthritic changes to his right knee before his left knee injury. The ALJ determined that Mr. Oakes had a preexisting condition of his right knee, and she applied 39-A M.R.S.A. § 201(4) (Pamph. 2020) to these facts.[2] *See Derrig v. Fels Co.*, 1999 ME 162, ¶ 6, 747 A.2d 580.

[¶5] Although the ALJ found that the left knee injury was compensable, she denied the claims for the right knee sequela on the grounds that Mr. Oakes failed to

[1] Mr. Oakes does not appeal the determination that his right leg DVT was not work-related.

[2] "When a case appears to come within [39-A M.R.S.A.] § 201(4), the [ALJ] must first determine whether the employee has suffered a work-related injury. If the employee is found to have an injury, then subsection 201(4) is applied if the employee has a condition that preceded the injury." *Celentano v. Dep't of Corr.*, 2005 ME 125, ¶ 9, 887 A.2d 512. (citation and quotation marks omitted).

sustain his burden of proof that it was work-related. Mr. Oakes filed a motion for findings of fact and conclusions of law. The ALJ corrected a clerical error but did not alter the outcome of the original decision. This appeal followed.

II. DISCUSSION

[¶6] "A finding of fact by an administrative law judge is not subject to appeal." 39-A M.R.S.A. §321-B (Pamph. 2020). Review by the Appellate Division 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). On issues of law, we "assure that [the ALJ's] decision involves no misconception of applicable law and that the application of the law to the facts was neither arbitrary nor without rational foundation." *Id*. Because Mr. Oakes filed a post-decree motion for further findings of fact and conclusions of law, on appeal we may not scour the record for evidence to support the decree; instead, we review only the factual findings actually made, and the legal standards actually applied by the ALJ. *Daley v. Spinnaker Indus.*, 2002 ME 134, ¶ 17, 803 A.2d 446.

[¶7] At the hearing, Mr. Oakes had the burden to prove, among other things, that the right knee meniscal tear and the need for surgery were more likely than not caused by the work-related left knee injury. *See Fernald v. Dexter Shoe Co.*, 670 A.2d 1382, 1385 (Me. 1996). "When an [ALJ] concludes that the party with the burden of proof failed to meet that burden, we will reverse that determination only

if the record compels a contrary conclusion to the exclusion of any other inference." *Kelley v. Me. Pub. Employees Ret. Sys.*, 2009 ME 27, ¶ 16, 967 A.2d 676. Thus, to prevail on appeal, Mr. Oakes must demonstrate that the ALJ was compelled by the evidence to find that the right knee condition was caused by the left knee injury and is therefore compensable. *See Savage v. Georgia Pacific*, Me. W.C.B. No. 13-5, ¶ 7 (App. Div. 2013).

[¶8] Mr. Oakes contends the following evidence compels a finding that the right knee sequela is work-related: multiple M-1 practitioner reports, including from Dr. Huffard's office, indicating that the right torn meniscus is work-related; and a letter from Emma Ansara, FNP, Mr. Oakes' primary care provider, who wrote that she "hopes" her recitation of the medical history and her observation of Mr. Oakes's right knee problem would be taken into consideration as a complication of the work-related left knee injury.

[¶9] The ALJ was not persuaded by this evidence. Instead, she credited Dr. Huffard's explicitly stated opinion regarding causation. Dr. Huffard opined as follows:

> I cannot attribute whether the tear in his [right] meniscus is related to walking in an awkward way on his left knee. These are degenerative injuries. Walking with a limp could put more stress on that, but he had significant arthritic change that likely predated his left knee pain.

From this, the ALJ found that the cause of the right knee injury was probably the progression of the preexisting degenerative process in the right knee.

[¶10] Although the M-1 practitioner forms that were issued by Dr. Huffard's office indicate the right knee torn meniscus is work-related, Dr. Huffard's opinion gave an explanation specifically tailored to the issue of causation. Additionally, the ALJ reasonably viewed Ms. Ansara's letter as not amounting to an expert opinion that Mr. Oakes' right knee condition was caused or contributed to in a significant manner by an altered gait following left knee surgery.

[¶11] The ALJ did not err when interpreting and adopting the portions of Dr, Huffard's opinion that she found persuasive. *Rowe v. Bath Iron Works Corp.*, 428 A.2d 71, 74 (Me. 1981). The ALJ has authority to accept or reject expert medical opinions, in whole or in part. *Leo v. American Hoist & Derrick Co.*, 438 A.2d 917, 920-21 (Me. 1981). The choice between competing expert medical opinions is a matter soundly within the purview of the ALJ who hears the case. *See Traussi v. B & G Foods, Inc*., Me. W.C.B. No. 15-10, ¶ 17 (App. Div. 2015).

[¶12] Additionally, even if Ms. Ansara's letter could be interpreted as sufficient to meet Mr. Oakes' burden of proof, it is the province of the ALJ as fact-finder to determine the weight, if any, to be accorded to certain medical evidence. *See Dionne v. Le Clerc*, 2006 ME 34, ¶ 15, 896 A.2d 923 (stating that a trial court is not required to believe the testimony of any particular witness, expert or otherwise, even when the testimony is uncontradicted).

[¶13] Dr. Huffard's opinion supports the ALJ's determination that Mr. Oakes did not establish on a more probable than not basis that the right knee condition is work-related. *See Oriol v. Portland Housing Auth.*, Me. W.C.B. 14-35, ¶ 12 (App. Div. 2014). We are not compelled to determine otherwise.

[¶14] Mr. Oakes further contends that the medical evidence compels a finding that he has presented a *prima facie* case, and because no contrary evidence was offered by the insurer, the ALJ erred as a matter of law in determining that he did not meet his burden of proving that the right knee injury was probably caused by the work-related left knee injury. We disagree.

[¶15] The Law Court has stated:

> The fact that the testimony of a party to a suit is not directly contradicted does not necessarily make it conclusive and binding upon the court. … It should be carefully considered and weighed with all of the other evidence in the case, and with all of the inferences to be properly drawn from facts established by the evidence; … the court is not required to put the stamp of verity upon it, merely because it is not directly contradicted by other testimony.

Qualey v. Fulton, 422 A.2d 773, 775 (Me. 1980) (quoting *Mitchell v. Mitchell*, 136 Me. 406, 418, 11 A.2d 898, 904 (1940)).

[¶16] The ALJ carefully weighed all the evidence presented, including Dr. Huffard's opinion, and concluded that the evidence did not prove on a more probable than not basis that the right knee injury was caused by the compensable left knee injury. We find no error.

III. CONCLUSION

[¶17] The ALJ did not err when interpreting and adopting those portions of the medical evidence which she found persuasive. The ALJ's factual findings are supported by competent evidence, and the decision involves no misconception of the applicable law. The application of the law to the facts was neither arbitrary nor without rational foundation.

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 (Pamph. 2020).

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.

Christopher Cotnoir, Esq.
Workers' Compensation Board
Worker Advocate Division
71 State House Station
Augusta, ME 04333-0071

Elizabeth Eddy Griffin, Esq.
MEMIC
P. O. Box 3606
Portland, ME 04104-3606