JOSEPH MASSELLI
(Appellant)

v.

YELLOW TRANSPORTATION, INC.
(Appellee)

and

GALLAGHER BASSETT
(Insurer)

Conference held: February 2, 2022
Decided: October 31, 2022

PANEL MEMBERS: Administrative Law Judges Pelletier, Elwin, and Rooks
By: Administrative Law Judge Rooks

[¶1] Joseph Masselli appeals from a decision of a Workers' Compensation Board administrative law judge (*Chabot, ALJ*), granting his Petition for Award of Compensation and denying his Petition for Payment of Medical and Related Services. Mr. Masselli contends that, because the independent medical examiner (IME) appointed pursuant to 39-A M.R.S.A § 312 lacked expertise in the relevant specialty, the ALJ erred in relying on that opinion to find that chiropractic care after June 2008 was not reasonable and proper treatment under 39-A M.R.S.A. § 206. We agree in part and remand the decision for further findings.

I. BACKGROUND

[¶2] Joseph Masselli has worked for Yellow Transportation, Inc., since 1986 as a "combo driver," loading and unloading product and driving. On August 7, 2007, he experienced a popping sensation in his back and right buttocks pain when attempting to open a door that had become stuck. The next day he felt right leg pain into his knee.

[¶3] Diagnostic imaging confirmed that Mr. Masselli suffered a right-sided disc herniation at L4-L5. When he was out of work for approximately 10 months following the injury, Mr. Masselli underwent physical therapy and chiropractic treatment. As of the date of the hearing, Mr. Masselli continued to receive chiropractic treatment approximately once per month with Dr. Philip McLean. The chiropractic care was not managed by a primary care physician.

[¶4] At issue was whether the ongoing chiropractic treatment was reasonable and proper, and thus compensable, pursuant to 39-A M.R.S.A. § 206. Mr. Masselli testified that the treatment allowed him to continue to work full-time and avoid surgical intervention. A March 3, 2020, letter from Dr. McLean stated Mr. Masselli's chiropractic care "has been reasonable and necessary."

[¶5] Dr. John Bradford conducted an independent medical examination on October 27, 2020. He opined that Mr. Masselli sustained a work injury on August 7, 2007, and continued to suffer the effects, stating: "there is still mild radiculitis and

low back pain, pursuant to that injury." However, Dr. Bradford disagreed with the amount of chiropractic treatment that Mr. Masselli had received, stating that he "would not condone the extent or frequency of the treatments over this long period of time." Dr. Bradford further clarified this position at his deposition as follows: "I do challenge the notion that this chiropractic care after June of 2008 was both necessary, reasonable and proper." He opined that Mr. Masselli did not receive a palliative benefit from the treatment following that date.

[¶6] The ALJ was required to adopt the medical findings of the independent medical examiner absent clear and convincing contrary evidence in the record. 39-A M.R.S.A. § 312(7). The ALJ determined that Dr. McLean's opinion did not meet the clear and convincing standard required by section 312(7). Accordingly, the ALJ issued a decree consistent with Dr. Bradford's findings, granting the Petition for Award of Compensation and denying the Petition for Payment of Medical and Related Services. Mr. Masselli filed a Motion for Additional Findings of Fact and Conclusions of Law, which the ALJ denied. This appeal followed.

II. DISCUSSION

A. Standard of Review

[¶7] In hearing appeals from ALJ decisions, 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 Mr. Masselli 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 (quotation marks omitted). When requested by a party, an ALJ has an obligation to make sufficient findings of fact and conclusions of law so that meaningful appellate review is possible. *Gallant v. Boise Cascade Paper Group*, 427 A.2d 976, 977 (Me. 1981); *Cote v. Town of Millinocket*, 444 A.2d 355, 357, 359 n.5 (Me. 1982). Sufficient findings include those that allow a reviewing body effectively to determine the basis of the ALJ's decision; that is, whether the decision is supported by competent evidence or the ALJ misconstrued or misapplied the law. *See Chapel Road Assocs., L.L.C. v. Town of Wells*, 2001 ME 178, ¶ 10, 787 A.2d 137.

B. IME's Expertise Regarding Chiropractic Care

[¶8] Mr. Masselli contends that the ALJ erred by adopting Dr. Bradford's medical opinion on the reasonableness of chiropractic care when he lacks training and expertise in that specialty. Mr. Masselli further argues that Dr. Bradford is uninformed regarding chiropractic care as evidenced by his opinion that insurance companies should not be compelled to pay for the treatment on a long-term basis.

Mr. Masselli submits that this case is analogous to *Hood v. Me. Dep't of Corrections*, Me. W.C.B. No. 18-5 (App. Div. 2018). Mr. Masselli argues that because the ALJ did not make findings regarding whether Dr. Bradford is qualified to give an opinion in a chiropractic case, the case should be remanded to allow the ALJ to do so, consistent with *Hood*. We agree.

[¶9] *Hood* involved a work-related respiratory injury resulting from a toxic exposure. *Id.* ¶ 4. The IME, who opined that the respiratory injury had resolved, testified that he had never treated a patient with a similar toxic exposure and had very little experience or training in occupational medicine or pulmonology. *Id.* The employee argued that the ALJ should reject the IME's opinion in favor of opinions from experts with experience in the relevant specialty. *Id.* The ALJ nevertheless adopted the IME's medical findings. *Id.* ¶ 5.

[¶10] The employee in *Hood* had requested additional findings of fact related to the IME's qualifications and experience with toxic exposure cases and the relative qualifications and experience of the other medical experts who had submitted evidence, but the ALJ did not issue additional relevant findings. *Id.* ¶ 9. Because the Appellate Division panel was unable to determine what findings or conclusions the ALJ made with regard the medical experts' relative qualifications and experience, the panel determined that it could not ascertain the basis of the ALJ's decision and therefore could not conduct a meaningful review of whether clear and convincing

evidence overcame the IME's medical opinion. *Id.* ¶ 10. Thus, the Appellate Division remanded the case for additional findings on that issue. *Id.*

[¶11] In this case, we are unable to determine what findings or conclusions were made by the ALJ regarding the issue of the IME's level of experience with chiropractic care or his specific medical expertise when compared to the expertise of the competing medical expert in the case. The ALJ's original decree does not provide an adequate foundation for appellate review on all the issues raised by Mr. Masselli and does not allow the appellate division to easily ascertain the basis of the ALJ's decision. *See Dube v. Paradis Pulp & Logging Co., Inc*., 489 A.2d 10, 11 (Me. 1985) (finding error in a failure to issue findings of fact adequate to permit meaningful appellate review).

III. CONCLUSION

[¶12] Because Mr. Masselli requested further findings of fact and conclusions of law, the Appellate Division may only review the findings actually made by the ALJ. Those findings do not provide an adequate basis for meaningful review and therefore, the case is remanded for further findings.

The entry is:

> The ALJ's decision is remanded for further findings consistent with this decision.

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.

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:
James J. MacAdam, Esq.
Donald M. Murphy, Esq.
MacAdam Law Offices, P.A.
45 Mallett Drive
Freeport, ME 04032

Attorney for Appellee:
Joshua E. Birocco, Esq.
Kayla A. Estes, Esq.
Tucker Law Group
P.O. Box 696
Bangor, ME 04402-0696