

ESTATE OF CHRISTOPHER D. ELLIOTT  
(Appellant)

v.

CPM CONSTRUCTORS  
(Appellee)

and

TRAVELERS CASUALTY INSURANCE CO. OF AMERICA  
(Insurer)

Argument held: July 9, 2025  
Decided: November 25, 2025

PANEL MEMBERS: Administrative Law Judges Stovall, Hirtle, and Smith  
BY: Administrative Law Judge Hirtle

[¶1] The Estate of Christopher Elliott appeals from a decision of an administrative law judge of the Workers' Compensation Board (*Elwin, ALJ*) denying the Estate's Petition for Award—Fatal regarding an injury date of July 30, 2018. The Estate contends the ALJ erred by failing to apply the evidentiary presumption that arises when an employee has been killed or is otherwise unavailable to testify. *See* 39-A M.R.S.A § 327. The Estate asserts additional error when in the alternative, the ALJ based her ruling on the independent medical examiner's findings, which it contends are improperly based on speculation and conjecture. We agree with the Estate's first contention, but affirm the decision based on the ALJ's alternative findings.

## I. BACKGROUND

[¶2] Christopher Elliott injured his right shoulder while working for CPM Constructors on July 30, 2018. He went on to have right shoulder surgery in December of 2019, followed by a course of physical therapy. On January 7, 2020, Mr. Elliott attended a physical therapy appointment. Following the appointment, Mr. Elliott was found unresponsive in his vehicle parked at the physical therapist's office. Efforts to revive Mr. Elliott were unsuccessful. No autopsy was performed.

[¶3] Cheryl Elliott, the widow of Christopher Elliott, brought a claim for death benefits pursuant to 39-A M.R.S.A. § 215. The Estate introduced an expert medical opinion from Dr. Funte, the Deputy Chief Medical Examiner for the State of Maine, who stated that Mr. Elliott died because either the work injury or shoulder surgery caused an upper extremity deep venous thrombosis that had dislodged and caused a fatal pulmonary embolism.

[¶4] Dr. Edward Teufel was appointed as an independent medical examiner pursuant to 39-A M.R.S.A. § 312. Dr. Teufel opined that Mr. Elliott most likely died from an acute cardiac event unrelated to the work injury. Dr. Teufel also opined that in the absence of an autopsy, opinions regarding the cause of death were "complete conjecture." CPM Constructors also retained Dr. Ewald pursuant to 39-A M.R.S.A. § 207, who issued an opinion consistent with that of Dr. Teufel.

[¶5] The ALJ determined that the section 327 presumption “is not applicable in this case, because the parties have stipulated to all three of the facts the presumption would otherwise supply.” The ALJ found, however, that section 327 does not provide a presumption on the issue of medical causation.<sup>1</sup> The ALJ then relied upon Dr. Teufel’s opinion to find that the Estate had not met its burden to show on a more probable than not basis that Mr. Elliott’s death was work related. In the alternative, the ALJ stated that even if the section 327 presumption applied to shift the burden to CPM on the issue of medical causation, the opinions of Dr. Teufel and the section 207 physician would be sufficient to disprove that the work injury was a causal factor in Mr. Elliott’s death.

[¶6] The Estate filed a Motion for Additional Findings of Fact and Conclusions of Law, which the ALJ granted. However, she made no substantive changes to the outcome. This appeal followed.

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<sup>1</sup> The ALJ stated in the decree:

The Board finds that the §327 presumption is not applicable in this case, because the parties have already stipulated to all three of the facts the presumption would otherwise supply. There is no dispute that Mr. Elliott received a personal injury arising out of and in the course of employment, that sufficient notice of the injury was given, and that his death was not a suicide. By its terms, the §327 presumption provides legal causation (“arising out of”), but does not address the issue of medical causation.

## II. DISCUSSION

### A. Standard of Review

[¶7] In general, 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 the Estate requested findings of fact and conclusions of law following the decision, the Appellate Division will “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. When the ALJ adopts an independent medical examiner’s findings, the Appellate Division will reverse only if those findings are not supported by any competent evidence, or the record discloses no reasonable basis to support the decision. *See Pomerleau v. United Parcel Serv.*, 464 A.2d 206, 209 (Me. 1983); *Dillingham v. Great N. Paper*, Me. W.C.B. No. 15-7, ¶ 3 (App. Div. 2015).

### B. Presumption of 39-A M.R.S.A. § 327

[¶8] The Estate contends that the ALJ committed legal error by misconceiving and misapplying the section 327 presumption. We agree.

[¶9] In general, when an employee under the Workers’ Compensation Act has been killed or is unable to testify, a rebuttable presumption arises that (1) the employee received a personal injury arising out of and in the course of employment, (2) sufficient notice of the injury has been given, and (3) the injury or death was not occasioned by the willful intention of the employee to injure or kill the employee or another. 39-A M.R.S.A. § 327.<sup>2</sup> The Law Court has construed section 327 to establish an additional prerequisite, referred to as “linkage,” which requires evidence

of circumstances which indicate that the bringing of a claim for compensation is a rational act—that is, that the incident to which the claim relates has some rational potential of eventuating in an award of compensation when it is deemed supplemented by testimony which, within reasonable limits, may be conceived as potentially forthcoming from the employee were the employee available as a witness.

*Toomey v. City of Portland*, 391 A.2d 325, 331-32 (Me. 1978).

[¶10] The ALJ noted that the parties had stipulated to all three of the facts that the presumption would otherwise supply, stating that “There is no dispute that Mr. Elliott received a personal injury arising out of and in the course of employment, that sufficient notice of the injury was given, and that his death was not a suicide.”

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<sup>2</sup> Title 39-A M.R.S.A § 327 provides:

**When employee killed or unable to testify.**

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.

She further concluded, however, that “[b]y its terms, the §327 presumption provides legal causation (‘arising out of’), but does not address the issue of medical causation.” This is legal error.

[¶11] An employee is entitled to receive compensation under the Workers’ Compensation Act when that employee has “receive[d] a personal injury arising out of and in the course of employment.” 39-A M.R.S.A. § 201(1).<sup>3</sup> 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 v. Me. Coastal Serv.*, 449 A.2d 362, 365 (Me. 1982) (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.” *Id.* (quoting *Barrett v. Herbert Eng’g, Inc.*, 371 A.2d 633, 636 (Me. 1977)).

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<sup>3</sup> Title 39-A M.R.S.A. § 201(1) provides:

**1. Entitlement.** If an employee who has not given notice of a claim of common law or statutory rights of action, or who has given the notice and has waived the claim or rights, as provided in section 301, receives a personal injury arising out of and in the course of employment or is disabled by occupational disease, the employee must be paid compensation and furnished medical and other services by the employer who has assented to become subject to this Act.

[¶12] Although research has disclosed no Law Court opinion explicitly stating that proof that an injury arises out of employment includes the element of medical causation,<sup>4</sup> the Law Court has cited Professor Larson’s treatise on workers compensation, which notes that establishing a causal connection between the employment and the injury has both legal and medical components. *See Bryant v. Masters Machine Co.*, 444 A.2d 329, 335-36 (Me. 1982).<sup>5</sup>

[¶13] In *Toomey v. Portland*, 391 A.2d 325, 329 (Me. 1978), when considering the scope of the precursor to section 327,<sup>6</sup> the Law Court noted in *obiter dictum* that pursuant to parallel language in Massachusetts law, “the force of the

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<sup>4</sup> *See Wescott v. S.D. Warren*, 447 A.2d 78, 81 (Me. 1982), in which the Law Court declined to decide the issue as unnecessary for resolution of the appeal, stating:

It is clear from the Commissioner’s language quoted above and from other language in the decree that the Commissioner did not rely on section 64-A [predecessor to 39-A M.R.S.A. § 327] as the basis for his conclusion that Wescott’s myocardial infarction arose out of (i.e., was caused by) his employment. His reference to the presumption, whether or not appropriate, did not harm the employer by affecting the result.

<sup>5</sup> The current edition of the treatise states:

Under the legal test, the law must define what kind of exertion satisfies the test of “arising out of the employment.”

Under the medical test, the doctor must say whether the exertion (having been held legally sufficient to support compensation) in fact caused [the injury].

All too often these two tests are scrambled together. When this happens, the effect is usually that one is lost sight of.

<sup>3</sup> Arthur Larson, Lex K. Larson & Thomas A. Robinson, *Larson’s Workers’ Compensation Law* § 46.03[1] (the prior edition quoted in *Bryant* is found at 1B Larson, *The Law of Workmen’s Compensation*, § 38.83, at 7-235 (1980)).

<sup>6</sup> *See* 39 M.R.S.A. § 64-A (repealed and replaced by P.L. 1991, c. 885, §§ A7, A8), which, when applicable, also provided for a presumption that the employee received “an injury arising out of and in the course of employment.”

presumption” is such that it supplies “every element necessary to justify an award of compensation.” *Toomey*, 391 A.2d 329.

[¶14] Additionally, several Appellate Division panels have concluded that the phrase “arising out of and in the course of employment” includes the elements of both legal and medical causation. *See, e.g., Dunn v. Sunrise Senior Living*, Me. W.C.B. No. 15-24, ¶ 10 (App. Div. 2015) (stating “In addition to determining whether a gradual injury occurred, the hearing officer must determine whether that injury arose out of and in the course of employment, i.e., whether the work activity or event was both a medical and legal cause of the employee’s disability.”); *Savage v. Georgia Pacific Corp.*, Me. W.C.B. No. 13-5, ¶ 16 (App. Div. 2013) (stating “a hearing officer must determine whether the employee suffered an injury that arose out of and in the course of the employment, i.e. whether the work activity or event was both a medical and legal cause of the employee’s disability.”).

[¶15] Based on these authorities, we conclude that when the section 327 presumption applies, the phrase “arising out of and in the course of employment” requires the ALJ to presume that the employee has established both medical and legal causation, thereby placing the burden of persuasion on the employer regarding these issues. *See Lavalley v. Town of Bridgton*, Me. W.C.B. No. 15-13, ¶ 13 (App. Div. 2015). It was legal error for the ALJ to conclude that medical causation is outside the scope of the section 327 presumption. The Estate met the evidentiary

requirements for application of the presumption in this case. However, for the reasons set out below, we conclude that the ALJ's alternative analysis provides a sound legal basis for affirming the decision.

### C. Medical Causation Findings in the Alternative

[¶16] The ALJ found that even if the presumption of section 327 had been applied and the burden of persuasion shifted onto CPM regarding medical causation, CPM met that burden with the opinions of Dr. Teufel and the section 207 physician. The Estate argues that these opinions are too speculative and therefore are not competent to support the ALJ's conclusion.

[¶17] “Except in cases where causation is clear and obvious to a reasonable [person] who had no medical training[,] an employee [or the party with the burden of persuasion] must rely on the opinion of a qualified medical expert to meet his or her burden of proof on the issue of medical causation.” *Wickett v. Univ. of Me. Sys.*, Me. W.C.B. No. 17-27, ¶ 8 (App. Div. 2017) (quotation marks omitted). “[A]lthough slender evidence may be sufficient [to meet the burden of persuasion], it must be evidence, not speculation, surmise or conjecture.” *Grant v. Georgia-Pacific Corp.*, 394 A.2d 289, 290 (Me. 1978).

[¶18] In *Wickett*, the Appellate Division vacated an ALJ's decision that was based on a speculative and inconclusive medical opinion. Me. W.C.B. No. 17-27, ¶¶ 13-14. Specifically, the expert physician in *Wickett* testified to a causal connection

that was “a likely possibility” based on a temporal relationship between the work injury and the subsequent need for surgery. *Id.* ¶ 12. The expert admitted that he could only “speculate” and that it was merely a “possibility” that the fall sustained at work resulted in the retroperitoneal mass that ultimately required surgery. *Id.*

[¶19] In vacating *Wickett*, the Appellate Division relied on *Grant v. Georgia-Pacific Corp.*, 394 A.2d 289. In *Grant*, the employer filed a petition for review, arguing that the employee had regained a work capacity. 394 A.2d at 289-90. The commissioner agreed based on expert medical testimony that the employee “may try [some work] without heavy lifting” and that “it may be a good idea for [the employee] to try and see what he can do.” *Id.* at 290. The Law Court vacated the judgment, holding that such speculative testimony was not sufficient to meet the employer’s burden of proof on the issue of work capacity. *Id.* at 290-91.

[¶20] This case, however, is distinguishable from *Wickett* and *Grant*. Although CPM’s medical expert and the independent medical examiner stated that it was speculative to opine on the cause of death due to the lack of an autopsy, Drs. Teufel and Ewald also shared the opinion that an acute cardiac event unrelated to the work injury was the most likely cause of Mr. Elliott’s death.<sup>7</sup> They reached this

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<sup>7</sup> For purposes of clarity, we note that Dr. Teufel’s statement alone, that any opinion on causation is “complete conjecture,” would not be competent evidence to meet CPM’s burden of persuasion in this case. However, Dr. Teufel’s opinion that Mr. Elliott most likely died from an acute cardiac event unrelated to the work injury is competent evidence to meet CPM’s burden of persuasion. The mere presence of contradictory evidence does not render an expert’s medical opinion incompetent. *See Rowe v. Bath Iron Works*, 428 A.2d 71, 73 (Me. 1981). It is the province of an ALJ, as fact-finder, to accept or reject expert

conclusion after a review of medical records, with both doctors noting that Mr. Elliott had multiple risk factors for cardiovascular disease such as obesity, hypertension, and a history of smoking. Dr. Teufel opined that although a pulmonary embolus could not be ruled out, the records did not show “that the patient was immobile enough prior to this event to sustain that,” and “there was no clear evidence of an upper extremity DVT ... based on the records of the physical therapist who had been seeing him.”

[¶21] Moreover, the ALJ was required to adopt the opinion of Dr. Teufel, the independent medical examiner, in the absence of clear and convincing contrary medical evidence. *See* 39-A M.R.S.A. § 312(7). The ALJ did not err when concluding that Dr. Funte’s opinion did not outweigh the independent medical examiner’s opinion on a clear and convincing basis.

[¶22] We agree with the ALJ that the opinions of Drs. Teufel and Dr. Ewald constituted sufficient, competent evidence to support the ALJ’s determination that CPM met its burden on the issue of medical causation. On this record, the Estate has not shown that the ALJ’s alternative determination that CPM disproved medical causation (1) is unsupported by competent evidence, or (2) that the record discloses

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medical opinions, in whole or in part. *See Leo v. Am. Hoist & Derrick Co.*, 438 A.2d 917, 920-21 (Me. 1981).

no reasonable basis to support the decision. *See Dillingham*, Me. W.C.B. No. 15-7, ¶ 3 (App. Div. 2015).

### III. CONCLUSION

[¶23] The ALJ erred in finding that the scope of the presumption in section 327 did not include medical causation. However, that error was rendered harmless by the ALJ's findings in the alternative that CPM disproved medical causation, and those alternative findings were supported by competent evidence.

The entry is:

The administrative law judge's decision is affirmed.

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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.

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Attorney for Appellant:  
Robert W. Weaver, Esq.  
Thistle Weaver & Morris  
60 Pineland Drive  
New Gloucester, ME 04260-5121

Attorney for Appellee:  
Douglas J. Alofs, Esq.  
Robinson, Kriger & McCallum  
12 Portland Pier  
Portland, ME 04101-4713