EILEEN McLAUGHLIN
(Appellant)

v.

COMMUNITY LIVING ASSOCIATION
(Appellee)

and

MEMIC
(Insurer)

Argued: April 25, 2024
Decided: June 6, 2024

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

[¶1] Eileen McLaughlin appeals from a decision of a Workers' Compensation Board administrative law judge (*Chabot, ALJ*)[1] granting her Petition for Award of Compensation in part and denying her Petition for Review of Incapacity. Ms. McLaughlin asserts that she suffers ongoing total incapacity due to the psychological sequelae of a 2011 physical work injury. The ALJ awarded her the protection of the Act but found that the work injury was no longer the cause of her psychological symptoms as of September 13, 2011. On appeal, Ms. McLaughlin contends the evidence compels a finding that she continues to suffer psychological effects from the 2011 work injury, and the ALJ erred in adopting the medical findings of Dr.

[1] A hearing was held on June 14, 2022, before ALJ Pelletier. ALJ Pelletier retired prior to issuing a decree, and this matter was transferred to ALJ Chabot. A conference was held at which Ms. McLaughlin requested a supplemental hearing. That hearing was held before ALJ Chabot on March 8, 2023.

Robert Gallon, who examined her pursuant to 39-A M.R.S.A. § 207. We affirm the decision.[2]

I. BACKGROUND

[¶2] In 2017, Ms. McLaughlin filed petitions related to a physical injury sustained on March 20, 2011, when she was assaulted by a patient while working as a nurse for Community Living Association. The board (*Pelletier, ALJ*) granted her the protection of the Act for that injury but determined that the physical effects had resolved by July 2011, and awarded no further incapacity or medical benefits. That decision was affirmed on appeal. *See McLaughlin v. Cmty. Living Ass'n*, Me. W.C.B. No. 19-15 (App. Div. 2019).

[¶3] After the 2011 injury, Ms. McLaughlin continued to work for Community Living Association until 2012 when she left to work as the Healthy

[2] Ms. McLaughlin's initial brief exceeds the twenty-page limit provided for in the board's rules, and she did not request permission to exceed that limit in advance. Me. W.C.B. Rule, ch. 13, § 6(6) ("Without prior approval of the panel acting through the presiding judge, briefs may not exceed 20 single-sided printed pages."). The appellee has objected and moved to strike the additional pages. The objection is sustained. Accordingly, we do not consider arguments made in the brief after page twenty. Even if we were to do so, however, the outcome would remain the same, as the later arguments repeat and reiterate arguments made in the first twenty pages.

Further, our review is limited to the evidentiary record submitted to the ALJ at the formal hearing. Materials submitted on appeal that were not submitted to the ALJ, including any annotations made on the medical records, have not been considered by the panel and are stricken from the record on appeal.

Finally, Ms. McLaughlin's brief contains citations to legal authorities that are either erroneous or misleading. For example, she cites to "State Workers' Compensation Act § 123.45" and "State Workers' Compensation Board Regulation 789.56." Neither authority exists in either the Maine Workers' Compensation Act or the rules promulgated by the Maine Workers' Compensation Board. The panel therefore rejects the authorities cited.

Maine Partnership Director with the Aroostook Band of the Maliseets. She held that position until 2015 when the funding for that program ended.

[¶4] Ms. McLaughlin's current petitions allege that she is experiencing psychological sequelae from the 2011 incident at work. Ms. McLaughlin has had a preexisting diagnosis of Post Traumatic Stress Disorder (PTSD) since at least 2006, and has treated with Deborah Gray, LCSW, since 2004.

[¶5] The ALJ reviewed the medical records submitted by the parties and determined that Ms. McLaughlin's preexisting PTSD was aggravated by the 2011 physical work injury, but she had returned to baseline by September 13, 2011. The ALJ further found that her psychological symptoms post-September 13, 2011, stem from her preexisting condition, as well as her ongoing issues dealing with the workers' compensation process, and thus they are not sequelae of the work injury.

[¶6] Ms. McLaughlin filed a Motion for Further Findings of Fact and Conclusions of Law. *See* 39-A M.R.S.A. § 318. The ALJ granted the motion and issued additional findings but did not alter the outcome of the case. This appeal followed.

II. DISCUSSION

A. Standard of Review

[¶7] 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 Ms. McLaughlin 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.

[¶8] As the petitioner, Ms. McLaughlin bore the burden of proof. *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 (quotation marks omitted).

B. Competent Evidence

[¶9] Ms. McLaughlin contends that the medical evidence compels the conclusion that she suffers ongoing total incapacity due to psychological sequelae of her 2011 work injury. She asserts that the ALJ erred by disregarding her testimony, and by considering only part of the medical record, particularly Dr.

Gallon's medical opinion.[3] She asserts that Dr. Gallon's opinion contains misrepresentations and inaccuracies, omitted symptoms, and is misleading and fraudulent. Ms. McLaughlin contends Dr. Gallon should have been disqualified because she had filed a complaint against him with the relevant licensing board prior to the section 207 examination in 2021.

[¶10] The ALJ evaluated the evidence and made a factual finding that although Ms. McLaughlin's preexisting psychological condition was aggravated by the March 2011 incident at work, the psychological effects caused by that incident had subsided as of September 13, 2011, and any ongoing symptoms were due to other causes.

[¶11] The determination of causal connection is a question of fact. *Brough v. Bell Pike Northeast*, 440 A.2d 365, 366 (Me. 1982). Our review, therefore, is limited to assessing whether the findings in the decree are supported by competent evidence. *Moore*, 669 A.2d at 158. It is immaterial that the record also contains evidence that would have supported a different conclusion. *Rowe v. Bath Iron Works*, 428 A.2d 71, 73 (Me. 1981). It is within the ALJ's authority to choose between conflicting versions of the facts, and we defer to the ALJ's judgment regarding the significance to attach to pieces of evidence. *See* Donald G. Alexander,

[3] In her Notice of Intent to Appeal and briefs, Ms. McLaughlin refers to Dr. Gallon as an independent medical examiner (a role described in 39-A M.R.S.A. § 312). This is inaccurate. Dr. Gallon examined Ms. McLaughlin pursuant to 39-A M.R.S.A. § 207 and as such, was selected by the employer.

Maine Appellate Practice at 314 (6th ed. 2022); *Mortimer v. Harry C. Crooker & Sons, Inc*., 423 A.2d 248, 249 (Me. 1980).

[¶12] The ALJ based his findings on Dr. Gallon's report, as well as on medical findings in the records of Ms. Gray, Ms. McLaughlin's treating therapist, and Dr. Diane Tennies, who performed a psychological evaluation and issued a report dated January 25, 2021. Having carefully reviewed the medical evidence in the record, we find that this is competent evidence that supports the ALJ's findings, and we affirm the ALJ's decision.

[¶13] Regarding Ms. McLaughlin's contention that Dr. Gallon's medical findings should be disregarded due to bias, we disagree. Dr. Gallon examined Ms. McLaughlin in 2011 and in 2021 and issued two reports. The ALJ considered that Ms. McLaughlin filed a complaint against Dr. Gallon with the licensing board after the first report was issued.[4] The ALJ determined that the allegation of bias was relevant to the weight to assign to the report, rather than its admissibility as evidence or the doctor's qualifications. Moreover, the ALJ considered that Dr. Gallon's findings in the 2021 report were consistent with the earlier report that was issued before any complaint was made; the later report contained the most thorough review of the medical records; and the findings in that report were supported by other

[4] At his deposition, Dr. Gallon testified that he had been made aware that Ms. McLaughlin stated that she intended to file a complaint against him, but he was not aware that she in fact had filed a complaint.

medical records in evidence. The decision to admit and consider Dr. Gallon's report was within the broad scope of the ALJ's discretion. *Boober v. Great N. Paper Co.*, 398 A.2d 371, 375 (Me. 1979). We therefore find no error.

III. CONCLUSION

[¶14] We affirm the decision. The ALJ's finding that Ms. McLaughlin's psychological symptoms were no longer caused by the March 2011 physical work injury after September 13, 2011, is supported by competent evidence and involves no misconception or misapplication of the law; and the decision to admit and consider Dr. Gallon's medical findings, and assign evidentiary weight to those findings, constituted a proper exercise of the ALJ's discretion.

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.

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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