LESLIE CAPITANO
(Appellee)

v.

STONEWALL KITCHEN, LTD.
(Appellant)

and

THE HARTFORD
(Insurer)

Conference held: May 21, 2014
Decided: August 4, 2014

PANEL MEMBERS: Hearing Officers Pelletier, Greene, and Knopf
By: Hearing Officer Greene

[¶1] Stonewall Kitchen appeals from a decision of a Workers' Compensation Board hearing officer (*Stovall, HO*) granting Leslie Capitano's Petition for Award for a November 22, 2010, work-related injury to her left shoulder. Stonewall Kitchen contends that there was no competent evidence to support the hearing officer's findings, pursuant to 39-A M.R.S.A. § 301, 302 (Supp. 2013),[1] that (1) Ms. Capitano was laboring under a mistake of fact until

[1] "For claims for which the date of injury is prior to January 1, 2013, proceedings for compensation under [the Workers' Compensation] Act, except as provided, may not be maintained unless a notice of the injury is given within 90 days after the date of injury." 39-A M.R.S.A. § 301 (2013). However, "[a]ny time during which the employee . . . fails [to give notice] on account of mistake of fact, may not be included in the computation of proper notice." *Id.* § 302. For a gradual injury, the date the 90-day notice period begins to run is when the employee becomes aware of the compensable nature of the injury. *Jensen v. S.D. Warren Co.*, 2009 ME 35, ¶ 26, 968 A.2d 528.

February 14, 2011, and (2) thereafter, she provided adequate, timely notice of her injury.

[¶2] Contrary to Stonewall Kitchen's first contention, the hearing officer's factual finding that Ms. Capitano first became aware that her injury was work-related on February 14, 2011, is supported by competent evidence in the record, including a medical record of a physical therapy evaluation at York Hospital (mistakenly referred to by the hearing officer as a report from Dr. Nicholas), which documents that on that date, Ms. Capitano plainly understood that her work activity was making her shoulder condition worse.

[¶3] Furthermore, the hearing officer's factual finding that Ms. Capitano provided the required notice within the ninety-day period after February 14 is supported in the record by Ms. Capitano's testimony and a medical record from Seacoast Area Physiatrists dated May 19, 2011, which documented that Ms. Capitano told the medical provider that she had reported the injury as work-related "weeks ago" to a supervisor who, according to employer witnesses, had not worked for the employer after March 1, 2011.[2]

[2] The first Practitioner's Report (WCB M-1) documenting an assessment by a medical provider that Ms. Capitano's condition was work-related, recommending work restrictions, and specifying the employer and the insurer as among the intended recipients of the form, was completed on March 28, 2011, also well within 90 days after February 14. The hearing officer did not specifically address the significance of this document and subsequent M-1 forms on the issue of notice, apparently because he found that Ms. Capitano's conversation with the supervisor, itself, constituted adequate and timely notice.

[¶4] The hearing officer was not required to make contrary findings based on other evidence in the record that could have supported a different outcome. *See Boober v. Great No. Paper Co.*, 398 A.2d 371, 375 (Me. 1979) (stating that where there is conflicting evidence and credibility is at issue, it is for the hearing officer, who "had the opportunity to hear the witnesses and judge their credibility . . . to resolve the evidentiary conflicts in the case.") (quoting *Lovejoy v. Beech Hill Dry Wall Co., Inc.*, 361 A.2d 252, 254 (Me. 1976)). Accordingly, we affirm the decision.

The entry is:

The hearing officer'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. 2013).

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