ROBERT S. ARSENAULT
(Appellee)

v.

CITY OF WESTBROOK
(Appellant)

and

MAINE MUNICIPAL ASSOCIATION
(Insurer)

Conference held: May 20, 2015
Decided: August 20, 2015

PANEL MEMBERS: Hearing Officers Pelletier, Elwin, and Stovall
BY: Hearing Officer Stovall

[¶1] A Workers' Compensation Board hearing officer (*Jerome*, *HO*) awarded Robert S. Arsenault total incapacity benefits for work-related injuries to his right knee and ankle that occurred on October 18, 2010; for a work-related injury to his right knee on January 2, 2013; and for the compensable effects of those injuries on his preexisting left knee condition pursuant to 39-A M.R.S.A. § 201(4) (2001).

[¶2] The hearing officer further determined that Mr. Arsenault's claims for work-related injuries of March 10, 2001, October 31, 2001, and August 29, 2005, were barred by the statute of limitations; and that the effects of his August 16, 2010, left wrist injury had resolved.[1]

[1] Mr. Arsenault does not appeal these aspects of the hearing officer's decision.

[¶3] The City of Westbrook appeals the hearing officer's decision. It contends that the hearing officer committed an error of law by basing her decision on the independent medical examiner's (IME's) opinion because that opinion included an assessment of incapacity resulting from all injuries without separating out the incapacity caused by the non-compensable injuries. The City further contends that the hearing officer was compelled to reject the IME's findings regarding incapacity based on clear and convincing contrary evidence. *See* 39-A M.R.S.A. § 312(7) (Supp. 2014). We affirm the hearing officer's decision.

[¶4] A hearing officer is required to "adopt the medical findings of the independent medical examiner unless there is clear and convincing evidence to the contrary in the record that does not support the medical findings." 39-A M.R.S.A. § 312(7). When "the hearing officer adopts the IME's findings, we will reverse only if those findings are not supported by any competent evidence, or the record discloses no reasonable basis to support the decision." *Dillingham v. Great N. Paper*, Me. W.C.B. No. 15-7, ¶ 3 (App. Div. 2015).

[¶5] We reject the City's premise that the hearing officer concluded that Mr. Arsenault was totally incapacitated as a result of the combined effects of all of his work injuries. She states in the decree: "I find that Mr. Arsenault has been totally incapacitated to earn on account of his October 18, 2010 and January 2, 2013 work injuries since July 22, 2013. I base this finding on Dr. Graf's opinion." Although

Dr. Graf testified in his deposition that the noncompensable work injuries contribute to Mr. Arsenault's incapacity from work, he also testified that Mr. Arsenault was able to work despite his work injuries up until his January 2, 2013, right knee injury, and he was not able to work thereafter. Accordingly, there is a reasonable basis in the record for the hearing officer to have found that Mr. Arsenault is totally incapacitated as a result of his compensable work injuries.

[¶6] Further, the hearing officer did not err when basing her decision on the IME's medical findings with regard to the extent of incapacity. The hearing officer was required to adopt Dr. Graf's medical findings absent clear and convincing contrary evidence in the record. *Id.* § 312(7). Because there is a reasonable basis in the record for those findings, we find no error.

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. 2014).

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