

CHRISTOPHER MAY  
(Appellant)

v.

SADDLEBACK, INC.  
(Appellee)

and

MEMIC  
(Insurer)

Argued: February 3, 2016  
Decided: February 16, 2016

PANEL MEMBERS: Administrative Law Judges<sup>1</sup> Hirtle, Collier, and Knopf  
BY: Administrative Law Judge Hirtle

[¶1] Christopher May appeals from a decision of a Workers' Compensation Board Administrative Law Judge (*Elwin, ALJ*), granting in part Mr. May's Petition for Award and denying his Petition for Payment of Medical and Related Services regarding a February 23, 2012, date of injury. The ALJ adopted the medical opinion of an independent medical examiner, appointed pursuant to 39-A M.R.S.A. § 312 (Supp. 2015), that, although Mr. May suffered a work-related right knee injury on February 23, 2012, any lasting right knee symptoms were due to Mr. May's extensive pre-injury right knee condition. On appeal, Mr.

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<sup>1</sup> Pursuant to P.L. 2015, ch. 297 (effective October 15, 2015) Workers' Compensation Board hearing officers licensed to practice law are now designated administrative law judges.

May argues that the ALJ erred by adopting the medical opinion of the section 312 examiner. We disagree, and affirm the decision.

## I. BACKGROUND

[¶2] Christopher May, while employed by Saddleback as a lodge cleaner, injured his right knee on February 23, 2012, when he slipped on ice and twisted his knee. Prior to this injury, Mr. May had several right knee injuries, which led to various surgeries, including an ACL reconstruction procedure, and he had been advised by his physicians that a total right knee replacement was inevitable. After his injury, Mr. May was able to continue working for Saddleback until the end of the ski season, and Saddleback paid for conservative medical care without prejudice. Beginning in May of 2012, Mr. May sought further care for his right knee. Saddleback refused to pay for that care.

[¶3] In filing a petition for award and petition for payment of medical and related services, Mr. May sought (1) to establish that his ongoing right knee complaints were related to his work injury, and (2) an order for Saddleback to pay for his medical care for this injury. On March 25, 2014, Mr. May was sent for an independent medical evaluation with Dr. Matthew Donovan pursuant to 39-A M.R.S.A. § 312. Dr. Donovan issued a report stating that Mr. May was suffering from an ACL insufficiency and “symptomatic progressive arthrosis” in his right knee prior to the work injury. After reviewing Mr. May’s medical records,

including post-injury imaging studies, Dr. Donovan concluded that Mr. May's work injury was a time-limited aggravation of his preexisting condition, and that by April 10, 2012, Mr. May had returned to his baseline condition. Saddleback's retained medical expert, Dr. Michael Mainen, examined Mr. May pursuant to 39-A M.R.S.A. § 207 and concluded that the work injury had caused a right knee sprain, but that Mr. May's current symptoms were due to his underlying and independent preexisting right knee condition. To the contrary, Mr. May presented a medical opinion from Dr. Nancy Cummings, his treating orthopedic surgeon, that Mr. May's work injury had contributed to his ongoing right knee symptoms.

[¶4] The ALJ adopted Dr. Donovan's medical conclusions after finding "Dr. Donovan's independent medical opinion was based on an accurate history and review of the medical records, including Dr. Cummings' opinion[.]" Based on Dr. Donovan's opinion, the ALJ found that Mr. May established the occurrence of a work related right knee injury, but that the effects of that injury had ended by April 10, 2012. Mr. May filed a Motion for Additional Findings of Fact and Conclusions of Law, which the ALJ granted but made no substantive changes to her conclusions. This appeal followed.

## II. DISCUSSION

[¶5] Opinions of an independent medical examiner appointed pursuant to 39-A M.R.S.A. § 312 are entitled to increased weight in claims before an ALJ, and

specifically, must be adopted absent “clear and convincing” evidence to the contrary. 39-A M.R.S.A. § 312(7). The Law Court has interpreted the “clear and convincing evidence to the contrary” standard of section 312(7) to require a showing “that it was highly probable that the record did not support the IME’s medical findings.” *Dubois v. Madison Paper Co.*, 2002 ME 1, ¶ 14, 795 A.2d 696 (Me. 2002). When an ALJ adopts the findings of the independent medical examiner, the ALJ’s decision may only be reversed on appeal if the independent medical examiner’s 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).

[¶6] In this case, there is competent evidence in the record to support both Dr. Donovan’s medical opinion and the ALJ’s adoption of that opinion. Further, the ALJ rationally could not have been persuaded that it was highly probable that Dr. Donovan was wrong, based on the evidentiary record. Because the ALJ was required to adopt Dr. Donovan’s medical opinions, we affirm the ALJ’s decision that the effects of Mr. May’s work related right knee injury ended as of April 10, 2012.

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 (Supp. 2015).

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