

RONALD REGULA
(Appellee)

v.

RSU NO. 23
(Appellant)

and

MAINE MUNICIPAL ASSOCIATION
(Insurer)

Argument held: February 3, 2016
Decided: August 23, 2016

PANEL MEMBERS: Administrative Law Judges Hirtle, Collier, and Knopf
BY: Administrative Law Judge Hirtle

[¶1] RSU No. 23 appeals from a decision of a Workers' Compensation Board administrative law judge (*Jerome, ALJ*) granting Ronald Regula's Petition for Award and Petition for Payment of Medical and Related Services regarding a December 7, 2012, date of injury. The ALJ adopted the medical opinion of Dr. Stephen Bamberger pursuant to 39-A M.R.S.A. § 312(7) (Supp. 2015) and found that Mr. Regula's exposure to an acetone based air freshener had contributed to his subsequent diagnosis of bilateral cataracts which required eye surgery. RSU No. 23 contends that the ALJ erred by adopting Dr. Bamberger's conclusions as persuasive "medical findings" within the language of section 312. We disagree, and affirm the decision.

I. BACKGROUND

[¶2] Ronald Regula was injured while working as a teacher at RSU No. 23 when he was sprayed in the face by an air freshener containing acetone. He experienced immediate irritation in his eyes. After seeking medical care for eye pain, Mr. Regula was diagnosed with bilateral cataracts that required surgical intervention. Mr. Regula's treating optometrist, Dr. Carl Robinson, diagnosed his cataracts as "probably secondary to toxic chemical exposure." Mr. Regula's treating ophthalmologist, Dr. Sterrer, stated that such a connection was "possible" and that "the acetone made [the cataracts] progress or it may be simply a coincidence."

[¶3] At the request of RSU No. 23, Dr. Michael Mainen conducted a records review and issued a medical opinion that there was no connection between Mr. Regula's injury and his cataracts. Mr. Regula was examined by Dr. Bamberger pursuant to 39-A M.R.S.A. § 312 (Supp. 2015). The ALJ found that "Dr. Bamberger opined that the cataract surgery was causally related to the exposure injury that Mr. Regula suffered on December 7, 2012." The ALJ then adopted Dr. Bamberger's conclusion after finding that there was not clear and convincing evidence to the contrary in the medical record.

[¶4] RSU No. 23 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] “Medical findings” of an independent medical examiner appointed pursuant to 39-A M.R.S.A. § 312 (Supp. 2015) are entitled to increased weight in claims before an ALJ of the board and specifically must be adopted absent “clear and convincing” evidence to the contrary. 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 [independent medical examiner’s] medical findings.” *Dubois v. Madison Paper, Co.*, 2002 ME 1, ¶ 14, 795 A.2d 696, 699-700. Where, as here, an ALJ adopts the findings of the independent medical examiner, the ALJ’s decision may only be reversed on appeal if the 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). *See also Dillingham v. Great Northern Paper*, Me. W.C.B. No. 15-7, ¶ 3 (App. Div. 2015).

[¶6] In this case, there is competent evidence in the record—the report from Dr. Robinson—to support both Dr. Bamberger’s medical opinion and the ALJ’s

adoption of that opinion. Dr. Robinson’s report, and the circumstances of Mr. Regula’s exposure and development of cataracts, also provide a rational basis for the ALJ’s decision to adopt the opinion. Contrary to the argument of RSU No. 23, Dr. Bamberger’s agreement with a causation opinion issued by another medical professional in the case is a “medical finding” within the language of 39-A M.R.S.A. § 312(7) to which the ALJ gave appropriate weight. Because the ALJ was required to adopt Dr. Bamberger’s medical opinion under these circumstances, we affirm the ALJ’s decision that Mr. Regula’s work injury contributed to his need for cataract surgery.

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 (Supp. 2015).

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