

CAROL J. BOUCHARD
(Appellant)

v.

WAL-MART STORES, INC.
(Appellee)

and

NEW HAMPSHIRE INSURANCE COMPANY/CMI
(Insurer)

Conference held: September 21, 2016
Decided: October 5, 2016

PANEL MEMBERS: Administrative Law Judges Knopf, Goodnough, and Jerome
BY: Administrative Law Judge Knopf

[¶1] Carol Bouchard appeals from a decision of an administrative law judge (*Hirtle, ALJ*) granting her Petition for Review in part, finding that while she did suffer a work-related injury resulting in myofascial pain syndrome, the condition causes none of her earning incapacity. Accordingly, the ALJ permitted Wal-Mart Stores, Inc., to terminate payment of partial incapacity benefits pursuant to 39-A M.R.S.A § 205(9) (Supp. 2015). The ALJ adopted the medical opinion of Dr. Karyn Woelflein pursuant to 39-A M.R.S.A § 312(7) (Supp. 2015) in finding that Ms. Bouchard's present incapacity is not work-related. Ms. Bouchard contends that the ALJ erred by adopting Dr. Woelflein's medical opinion because there is clear and convincing evidence to the contrary in the record. Ms. Bouchard also contends

that the ALJ abdicated his responsibility to make legal conclusions regarding Dr. Woelflein's report.

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

[¶3] 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 N. Paper*, Me. W.C.B. No. 15-7, ¶ 3 (App. Div. 2015). Because there is competent evidence in the record to support both Dr. Woelflein's medical opinion and the ALJ's adoption of that opinion, we find no error.

[¶4] Further, the ALJ properly relied on Dr. Woelflein's report and did not abdicate his duty to make legal conclusions regarding the compensability of Ms. Bouchard's claim. Moreover, the decision involved no misconception of applicable

law, and 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).

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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