ANTHONY C. BERGERON
(Appellant)

v.

CASELLA WASTE SYSTEMS, INC.
(Appellee)

and

CCMSI
(Insurer)

Conference held: December 9, 2015
Decided: November 29, 2016

PANEL MEMBERS: Administrative Law Judges Jerome, Elwin, and Stovall
BY: Administrative Law Judge Stovall

[¶1] Anthony Bergeron appeals from a decision of a Workers' Compensation Board administrative law judge (*Knopf, ALJ*) granting Casella Waste Systems, Inc.'s, Petition to Determine the Extent of Permanent Impairment. The ALJ adopted the medical opinions of two independent medical examiners pursuant to 39-A M.R.S.A § 312 (Supp. 2015) and found that Mr. Bergeron suffered from a 10% whole person permanent impairment as a result of a 2002 work injury to his low back at L5-S1 and L4-L5, and a 0% permanent impairment due to his depression.

[¶2] Mr. Bergeron had permanent impairment assessments completed by several doctors. In 2004, Dr. Pier attributed 10% whole person impairment to Mr.

Bergeron's low back injury. The 2004 assessment was noted in Dr. Bridgman's report in 2005. In 2009 and 2010 Mr. Bergeron was examined by Dr. Donovan pursuant to section 312. Dr. Donovan assessed 10% permanent impairment to Mr. Bergeron's low back. In 2012, Dr. Phillips assessed 15% permanent impairment to Mr. Bergeron's low back. Dr. Phillips also assessed a 7% permanent impairment rating for depression, which he found to be a psychological sequela of the work injuries. Also in 2012, Mr. Bergeron had a psychological permanent impairment assessment completed by Dr. Lobozzo pursuant to section 312. Dr. Lobozzo stated that Mr. Bergeron's symptoms are likely due to alcohol abuse and chronic pain, but opined, nonetheless, that Mr. Bergeron suffers 0% permanent impairment related to the work injury.

[¶3] Opinions of an independent medical examiner appointed pursuant section 312 are entitled to increased weight in claims before an ALJ of the Workers' Compensation Board. Pursuant to section 312(7), the ALJ must 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. 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.

Where, as here, an ALJ adopts the findings of an independent medical examiner, the ALJ's decision may be reversed on appeal only 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). *See also Dillingham v. Great N. Paper*, Me. W.C.B. No. 15-7, ¶ 3 (App. Div. 2015).

[¶4] Mr. Bergeron contends that the ALJ erred in adopting the opinions of the independent medical examiners because Dr. Phillips's opinion should have been adopted as clear and convincing evidence to the contrary of those opinions. In assessing a 15% permanent impairment rating to Mr. Bergeron's low back, Dr. Phillips acknowledged a herniation at L4-L5 and separately assigned it 5% permanent impairment on top of the 10% rating for an injury to the L5-S1, whereas the other doctors assessing permanent impairment used a regional approach under the American Medical Association *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993). Mr. Bergeron further asserts that because his testimony contradicted Dr. Lobozzo's conclusion that his symptoms are attributable to alcohol abuse and chronic pain, it is sufficient to establish permanent impairment for his mental condition.

[¶5] The ALJ found that Dr. Donovan's method for assessing permanent impairment more closely follows the instructions in the AMA *Guides* than that of

Dr. Phillips. *See Sprague v. Lucas Tree Experts*, 2008 ME 162, ¶ 4, 957 A.2d 206 ("The Board's rules require evaluators to use the fourth edition of the AMA Guides to assess the injured employee's permanent impairment level."). *See also* Me. W.C.B. Rule, ch. 7, § 6. This was not error. Moreover, Dr. Pier also used this method and similarly assessed a 10% permanent impairment rating for Mr. Bergeron's low back injury.

[¶6] The ALJ rejected Dr. Phillips's 7% permanent impairment rating for depression pursuant to Me. W.C.B. Rule, ch. 2, § 3(4), which states:

> Permanent impairment ratings required under this rule shall be calculated by a specialist in a field applicable to the employee's injury who is qualified by training and/or experience to perform permanent impairment assessments.

Dr. Phillips is not an expert in psychology or psychiatry. Thus, the ALJ adopted the only other psychiatric assessment in the record, Dr. Lobozzo's 0% permanent impairment assessment. The ALJ further found that, despite Mr. Bergeron's testimony contradicting Dr. Lobozzo's opinion regarding a change in alcohol consumption, the record was not adequate to provide a ratable assessment for his psychiatric problems because Dr. Lobozzo was the only specialist in that area to give an opinion. Therefore, the ALJ appropriately found that Mr. Bergeron suffered 0% permanent impairment due to depression.

[¶7] In this case, there is competent evidence in the record to support Dr. Donovan's and Dr. Lobozzo's medical opinions and the ALJ's adoption of those

opinions. Further, the record provides a reasonable basis to support the decision. Because the ALJ was required to adopt Dr. Donovan's and Dr. Lobozzo's medical opinions under the circumstances, we affirm the ALJ's decision that Mr. Bergeron suffered from 10% whole person permanent impairment.

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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