STATE OF MAINE
WORKERS' COMPENSATION BOARD

APPELLATE DIVISION
Case No. App. Div. 14-0052
Decision No.16-8

RICHARD POUZOL
(Appellee)

v.

L. BLANCHETTE & SONS, INC.
(Appellant)

and

MMTA WORKERS' COMPENSATION TRUST
(Insurer)

Argued: March 18, 2015
Decided: March 10, 2016

PANEL MEMBERS: Administrative Law Judges[1] Collier, Elwin, and Knopf
BY: Administrative Law Judge Knopf

[¶1] L. Blanchette & Sons, Inc. (Blanchette), appeals from a decision of an administrative law judge (*Goodnough, ALJ*), granting Richard Pouzol's Petition for Award and granting in part his Petition for Payment of Medical and Related Services. The administrative law judge (ALJ) found that Mr. Pouzol sustained a gradual low back injury that arose out of and in the course of his employment, and that the low back injury further had an acute component to it from an incident that occurred at work on April 26, 2013. Blanchette argues that the ALJ erred in finding (1) that Mr. Pouzol sustained an injury on April 26, 2013, and that his

[1] 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.

employment contributed to his disability in a significant manner pursuant to 39-A M.R.S.A § 201(4) (2001); (2) that the alleged April 26, 2013, injury remains a significant or substantial factor contributing to Mr. Pouzol's incapacity; and (3) that Mr. Pouzol's nonwork-related bilateral shoulder arthritis does not constitute a subsequent nonwork-related injury or disease pursuant to 39-A M.R.S.A.§ 201(5) (2001). We find no error and affirm the ALJ's decision.

I. BACKGROUND

[¶2] Richard Pouzol is a 61 year old resident of Sabattus, Maine. Mr. Pouzol began working for Blanchette in 1988 as a general laborer, moving furniture and driving a truck. He eventually became a truck foreman, running small moving crews. The ALJ found that Mr. Pouzol's work "was very physical in nature and required him to move heavy and awkward items on a regular and sustained basis, at times up and down multiple staircases." Based on the employee's testimony, and an independent medical examiner's report pursuant to 39-A M.R.S.A. § 312 (Supp. 2015), the ALJ concluded that Mr. Pouzol sustained an injury arising out of and in the course of his employment. This lower back injury occurred gradually over a long period, "but also likely had an acute component that occurred on April 26, 2013 while lifting a box during a move."

[¶3] As part of his decision, the ALJ recognized "that there are several discrepancies with respect to how, when, and the circumstances under which, the

injury was initially reported to the employer that give rise to some doubt regarding the occurrence of the acute event." While Mr. Pouzol's physical problems were evident prior to the claimed work injury, after considering the evidence as a whole, the ALJ was persuaded that Mr. Pouzol did experience an acute back injury and that it "resulted in a significant aggravation of his underlying pathological low back condition."

[¶4] The ALJ awarded benefits based on the difference between Mr. Pouzol's average weekly wage and an imputed earning capacity of $320 per week, representing 40 hours per week at $8 per hour, from January 1, 2014, to the present and continuing. Mr. Pouzol did not produce evidence of a work search.

[¶5] Mr. Pouzol also suffers from serious bilateral shoulder arthritis that incapacitates him on an ongoing basis. Dr. Donovan, the independent medical examiner, opined that 95% of Mr. Pouzol's incapacity to work was the result of shoulder arthritis and arthritic diathesis and only 5% was the result of his low-back condition. Blanchette argued that pursuant to section 201(5), it was entitled to a 95% offset against any incapacity benefits to which Mr. Pouzol would otherwise be entitled as a consequence of his shoulder condition. The ALJ rejected this argument, concluding that section 201(5) did not apply because Mr. Pouzol's shoulder arthritis, while unconnected to his compensable injury, was a preexisting condition and not a subsequent nonwork-related injury or disease. In so deciding,

the ALJ noted that Dr. Guernelli, a pain management specialist, identified Mr. Pouzol's shoulder condition as quite severe in nature in September 2012, although not incapacitating at that time. Because the shoulder condition was a preexisting condition and not a subsequent nonwork-related disease or injury, the ALJ concluded that Mr. Pouzol's benefits are "not subject to allocation or offset pursuant to section 201(5) of the Act."

[¶6] Lastly, the ALJ determined that Dr. Donovan's attribution of only 5% responsibility to Mr. Pouzol's back condition for the employee's partial incapacity did not render insignificant the contribution of Mr. Pouzol's work to his disability. The ALJ noted that Mr. Pouzol, "at age 60, and after a very physically demanding career as a mover, underwent rather extensive disc and fusion surgery that has left him with permanently implanted hardware in his lumbar spine. His ongoing lifting restrictions foreclose him from working as a mover, an occupation he performed for about 25 years." Accordingly, the ALJ concluded that Mr. Pouzol remains partially incapacitated due to the effects of his work injury notwithstanding the percentage Dr. Donovan assigned.

[¶7] The ALJ granted Mr. Pouzol's Petition for Award and granted in part the Petition for Payment of Medical and Related Services, finding compensable medical bills relating to Mr. Pouzol's low-back condition that were incurred on or

after April 26, 2013. Blanchette filed a motion for additional findings of fact and conclusions of law, which the ALJ denied. Blanchette now appeals.

II. DISCUSSION

A. Standard of Review

[¶8] The role of the Appellate Division on appeal "is limited to assuring that the [administrative law judge's] findings are supported by competent evidence, that [the] decision involved no misconception of applicable law and that 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) (quotation marks omitted). Appeals from administrative law judges' decisions are governed by 39-A M.R.S.A. §§ 321-B, 322 (Supp. 2015). Section 321-B (2) provides that "[a] finding of fact by an [administrative law judge] is not subject to appeal under this section."

B. Medical and Legal Causation

[¶9] Blanchette argues that the ALJ erred when applying 39-A M.R.S.A § 201(4) (2001), both by finding that Mr. Pouzol sustained an injury on April 26, 2013, and by concluding that his employment contributed to his disability in a significant manner. Section 201(4) provides:

> **Preexisting condition**. If a work-related injury aggravates, accelerates or combines with a preexisting physical condition, any resulting disability is compensable only if contributed to by the employment in a significant manner.

[¶10] In cases involving a preexisting condition, an ALJ must first determine whether a work-related injury occurred. That is, whether the purported injury arose out of and in the course of employment. *See Celentano v. Dep't of Corr.*, 2005 ME 125, ¶ 9, 887 A.2d 512. "[I]n a combined effects case the 'arising out of and in the course of requirement' is satisfied by a showing of both medical and legal causation." *Id.*, ¶ 12. "[T]o meet the test of legal cause where the employee bears with him some 'personal' element of risk because of a preexisting condition, the employment must be shown to contribute some substantial element to the risk, thus offsetting the personal risk which the employee brings to his employment environment." *Bryant v. Masters Machine Co.*, 444 A.2d 329, 337 (Me. 1982).

[¶11] Blanchette contends that the ALJ misapplied the law in determining that Mr. Pouzol's low back condition arose out of and in course of employment because he relied on the medical findings and opinions of Dr. Donovan, who predicated his causation opinion on the accuracy of Mr. Pouzol's story.[2] This argument, however, ignores the fact that the ALJ found Mr. Pouzol's version of

[2] While Blanchette couches its criticism of the ALJ's decision in terms of the ALJ's failure to adequately address legal causation, it appears that the heart of the argument takes issue with the adequacy of Dr. Donovan's medical causation opinion given that it was conditioned on the accuracy of Mr. Pouzol's story. Legal causation would only be in question if the issue were whether the work activity or work environment enhanced Mr. Pouzol's risk of injury. The work activity relevant to the gradual injury was years of heavy lifting. The work activity relevant to the acute injury was lifting a heavy box in particular. Both activities are sufficient to establish legal causation. *See Briggs v. H & K Stevens*, Me. W.C.B. No. 14-24, ¶ 19 (App. Div 2014)

events to be accurate. This credibility determination was within the ALJ's purview. He found that Mr. Pouzol sustained an acute injury in addition to his gradual injury when he lifted a box on the date of injury, adopting Dr. Donovan's medical opinion with regard to causation. As such, he did not err when determining that Mr. Pouzol suffered both a gradual and an acute injury to his back that arose out of and in the course of his employment.

[¶12] Blanchette further argues that the ALJ erred in applying section 201(4) because Dr. Donovan did not specify that Mr. Pouzol's work injury contributed to his disability in a significant manner. The significance of the contribution of the employment to the disability is more a legal question than a medical one, however. *See Briggs v. H & K Stevens,* Me. W.C.B. No. 14-24, ¶ 19 (App. Div 2014). Although Dr. Donovan apportioned 95% responsibility for Mr. Pouzol's incapacity to his shoulder condition and only 5% to his work-related back condition, the ALJ found that Mr. Pouzol's work-related low back condition, which required surgery and left Mr. Pouzol with implanted hardware and unable to return to his previous line of work, was significant irrespective of the modest numerical percentage assigned by Dr. Donovan. Thus, the ALJ did not err in finding that Mr. Pouzol sustained an injury on April 26, 2013, and that his employment contributed to his disability in a significant manner.

C. Subsequent Nonwork-Related Injury

[¶13] Blanchette next argues that (1) the ALJ erred as a matter of law in finding that Mr. Pouzol's nonwork-related bilateral shoulder arthritis does not constitute a subsequent nonwork-related injury or disease under 39-A M.R.S.A § 201(5) (2001); and (2) that accordingly, Blanchette is entitled to a reduction in benefits attributable to the shoulder injury. We disagree.

Section 201(5) provides:

> **Subsequent nonwork injuries**. If an employee suffers a nonwork-related injury or disease that is not causally connected to a previous compensable injury, the subsequent nonwork-related injury or disease is not compensable under this Act.

[¶14] Blanchette asserts that even though Mr. Pouzol had bilateral shoulder arthritis prior to the work injury, it did not become disabling until after the work injury, and should therefore be considered a subsequent nonwork-related injury or disease. However, the ALJ found that Mr. Pouzol's shoulder condition predated the work injury, and this finding is supported by competent evidence in the record. Dr. Guernelli characterized it as serious only months before the work injury. The evidence indicates the shoulder condition was neither episodic nor recurring, but, instead, gradually and steadily disabling. Thus, the ALJ did not err in determining that Mr. Pouzol's shoulder condition was not a subsequent nonwork-related injury.

[¶15] Moreover, because the ALJ did not err in determining that the shoulder condition predated the work-related back injury, he likewise did not err

when concluding that Mr. Pouzol's benefits are "not subject to allocation or offset pursuant to section 201(5) of the Act."

III. CONCLUSION

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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