STATE OF MAINE
WORKERS' COMPENSATION BOARD

APPELLATE DIVISION
App. Div. Case No. 16-0038
Decision No. 18-2

MICHAEL WHITE
(Appellant)

v.

S.D. WARREN COMPANY
(Appellee)

and

HELMSMAN/LIBERTY MUTUAL INSURANCE CO,

TRAVELERS/CONSTITUTION STATE SERVICES,

and

CANNON COCHRAN MANAGEMENT SERVICES, INC.
(Insurers)

Argued: May 18, 2017
Decided: January 17, 2018

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

[¶1] Michael White appeals from a decision of a Workers' Compensation Board administrative law judge (*Elwin, ALJ*) denying his Petition for Award alleging a gradual work injury as of May 8, 2009.[1] He argues that the ALJ erred by relying on one particular doctor's opinion when determining that Mr. White did not suffer a gradual work injury on that date. We disagree with Mr. White's contentions, and affirm the decision.

[1] Mr. White filed petitions related to numerous other dates of injury. S.D. Warren/CCMSI filed a Petition for Review and to Determine Extent of Permanent Impairment related to a 2000 date of injury. The ALJ ruled on all of the petitions, but the decision denying the Petition for Award for the May 8, 2009, date of injury is the only one challenged on appeal.

[¶2] Mr. White argues that it was error for the ALJ to rely on the opinion of John Bielecki, M.D., an occupational medicine specialist, because it is flawed in two respects. First, he asserts, the doctor looked only at a two-year period, rather than considering his entire 32-year career at the employer's mill, contrary to the instruction of *Derrig v. Fels Co.*, 1999 ME 162, 747 A.2d 580. Second, he argues, Dr. Bielecki looked to whether there had been a change in the underlying pathology, rather than whether the work had contributed significantly to his disability, which would contravene *Bryant v. Masters Machine Co*., 444 A.2d 329 (Me. 1982). In his view, the ALJ should have relied on the medical findings of Michael Mainen, M.D., who opined that Mr. White did suffer a gradual injury in 2009 as a result of the work he performed at S.D. Warren over his career.

[¶3] We find no error. The record demonstrates that Mr. White sustained a work injury to his elbow as of October 29, 2000. As to that injury, the ALJ quoted the surgeon, Catherine Meikle, M.D.: "Mr. White's right elbow difficulties are the result of both past traumas to the elbow which he sustained at work as well as an acute synovitis from overusing that elbow which is arthritic while running the clamp truck in October [2000]." The ALJ then made the following finding: "Dr. Meikle's opinion, shared by Drs. Bielecki, Graf, Boucher and Phillips, persuades the Board that Mr. White's right elbow surgery in 2001 and his right elbow

symptoms thereafter, were caused by the October 29, 2000 work injury." She also concluded, in analyzing the claim for a 2009 gradual elbow injury, that:

> [T]he Board does not believe that Mr. White's work activities leading up to May 2009 caused a new gradual injury. His bilateral gradual elbow problems had already "manifested" themselves in the past, and had been accepted as compensable work injuries. Even if (contrary to the Board's finding) additional work activities caused a flare-up of right elbow symptoms, these symptoms remained causally related to the October 29, 2000 work injury.

[¶4] It is apparent from the decree that the ALJ, along with considering Dr. Bielecki's opinion regarding the effect of Mr. White's work activity during a two-year period, also looked to his work activity over his career; to Mr. White's medical history regarding the right elbow injury, including Dr. Meikle's records; and the impact of that work activity on the elbow injury. Thus, her legal analysis complied with 39-A M.R.S.A. § 201(4) and did not run afoul of *Derrig* or *Bryant*.

[¶5] Mr. White bore the burden of persuasion on his Petition for Award on the 2009 injury claim, and the ALJ was not persuaded that he established a new, gradual injury. Dr. Bielecki's opinion, along with the other evidence cited by the ALJ, is competent evidence that supports that finding. And although there is some evidence that might have supported a contrary finding, particularly the opinion of Dr. Mainen, the evidence does not compel the conclusion that Mr. White sustained a gradual injury in 2009. *Levesque v. Daigle Oil Co*., Me. W.C.B. No. 17-21, ¶ 16 (App. Div. 2017). As fact-finder, the ALJ must weigh competing evidence, and the

decision to accept or reject particular expert medical opinions, in whole or in part, is a matter within her sound discretion. *See Leo v. Am. Hoist & Derrick Co.*, 438 A.2d 917, 920–21 (Me. 1981); *Rowe v. Bath Iron Works*, 428 A.2d 71, 74 (Me. 1981); *Davis v. Boise Cascade*, Me. W.C.B. 17-41, ¶ 21 (App. Div. 2017). Her decision in this case was grounded in the evidence and was neither arbitrary nor capricious.

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. 2016).

Pursuant to board Rule, chapter 12, § 19, all evidence and transcripts in this matter may be destroyed by the board 60 days after the expiration of the time for appeal set forth in 39-A M.R.S.A. § 322 unless (1) the board receives written notification that one or both parties wish to have their exhibits returned to them, or (2) a petition for appellate review is filed with the law court. Evidence and transcripts in cases that are appealed to the law court may be destroyed 60 days after the law court denies appellate review or issues an opinion.

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