GREGORY P. SAUCIER
(Appellant)

v.

CIANBRO CORPORATION/SELF INSURED
(Appellee)

Argued: September 20, 2017
Decided: May 17, 2019

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

[¶1] Gregory Saucier appeals from a decision of an administrative law judge (*Hirtle, ALJ*) granting Cianbro Corporation's Petitions for Review and to Determine the Extent of Permanent Impairment. The ALJ concluded that Cianbro had paid the maximum of 520 weeks of partial incapacity benefits and that Mr. Saucier's permanent impairment rating fell below the statutory threshold for duration of disability benefits, and thus allowed Cianbro to cease payment pursuant to 39-A M.R.S.A. § 213(1)(A) (Supp. 2018). Mr. Saucier argues that the ALJ erred in finding that Cianbro had paid the required number of weeks of compensation, and in concluding that his permanent impairment (PI) rating fell below the threshold because (1) he has not yet reached maximum medical improvement (MMI) and, (2) Dr. Kimball's assessment, upon which the ALJ's finding of PI was based, is inconsistent with an earlier, 2008 board decree. We affirm the decision.

I. BACKGROUND

[¶2] Mr. Saucier worked as a pipefitter for Cianbro from the 1980s until 2006. He suffered a work-related low back injury on April 8, 2002, while working for Cianbro, as established in an April 24, 2008, board decree (*Pelletier, HO*). That injury was also the subject of board decrees dated April 23, 2013, and April 28, 2016. Pursuant to those decisions, Mr. Saucier has been receiving partial incapacity benefits based on a $500 per week imputed earning capacity. Mr. Saucier also claimed an April 24, 2006, injury, which the board denied in the 2008 decree.

[¶3] In the current proceedings, Cianbro petitioned for review to establish that it has paid at least 520 weeks of partial benefits and that Mr. Saucier's PI rating is below the statutory threshold; both of which are necessary to allow Cianbro to cease benefit payments under section 213(1)(A). Cianbro presented evidence and testimony that it had made 539 weekly partial benefit payments to Mr. Saucier, represented by one lump sum of $35,085.52 in April 2008, followed by 433 weeks of regular benefit payments until August 2016.

[¶4] On the issue of weeks paid, the ALJ credited Cianbro's testimony and found that the $35,085.52 lump sum payment represented enough weeks of benefit payments to cover the difference between the undisputed 433 weeks and the statutory limit of 520 weeks. The ALJ therefore concluded that Cianbro had made the equivalent of at least 520 weeks of benefit payments.

[¶5] Regarding PI, the ALJ found that Mr. Saucier had failed to meet his burden of production to establish a genuine issue of whether his PI rating was above the statutory threshold. The ALJ found that Mr. Saucier had failed to present evidence sufficient to satisfy the burden of production set forth in *Farris v. Georgia-Pacific Corp*., 2004 ME 14, 844 A.2d 1143 (an employee is assumed to have sustained permanent impairment at a level below the threshold unless the employee presents some evidence to the contrary). However, the ALJ further concluded that even if Mr. Saucier had met his burden of production, Cianbro would have met its burden of proof to show that Mr. Saucier's PI rating is below the threshold based on Dr. Kimball's assessment of 5% whole person PI attributable to the 2002 injury.

[¶6] Because the ALJ concluded that the required number of weeks of benefits had been paid and that Cianbro had established that Mr. Saucier's PI rating was below the section 213(2) threshold, he granted both of Cianbro's petitions and allowed it to cease benefit payments. Mr. Saucier filed a Motion for Additional Findings of Fact and Conclusions of Law pursuant to 39-A M.R.S.A. § 318 (Supp. 2018). Although the ALJ indicated that he denied the Motion, he did, in fact, issue additional substantive findings on December 20, 2016. Those findings did not alter the outcome. Mr. Saucier appeals.

II. DISCUSSION

[¶7] "A finding of fact by an administrative law judge is not subject to appeal [before the Appellate Division]." 39-A M.R.S.A. § 321-B (Supp. 2018). Instead, appellate review is "limited to assuring that [the ALJ's] factual findings are supported by competent evidence." *Hall v. State*, 441 A.2d 1019, 1021 (Me. 1982). On issues of law, we ensure "that [the ALJ's] decision involves no misconception of applicable law and that the application of the law to the facts was neither arbitrary nor without rational foundation." *Id.*

A. Weeks Paid

[¶8] Mr. Saucier contends that the testimony supporting the ALJ's finding that the May 2008 lump sum payment represented at least 87 weeks of payments—needed to bridge the gap between the 433 undisputed weeks paid and the 520 required—is not competent evidence because the witness did not break down what was included in that sum. In Mr. Saucier's view, only evidence directly apportioning the lump sum into interest payments, unemployment benefits, and compensation benefits would be competent to support that finding. Without that evidence, Mr. Saucier characterizes the finding as "speculation, conjecture, or guesswork." We disagree.

[¶9] Competent evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *In re Maine Clean Fuels, Inc.*,

310 A.2d 736, 751 (Me. 1973). Ms. Webber testified that the lump sum payment represented approximately 104 weeks of compensation benefits, after considering interest and any other offsets. Although it is true that Ms. Webber did not precisely apportion the lump sum payment, her testimony is nevertheless competent to support the finding. Documents or testimony that would precisely establish these ascertained amounts may have been better evidence, but that fact does not make it unreasonable to rely on Ms. Webber's testimony.

[¶10] Moreover, the ALJ found Ms. Webber's testimony to be supported by the record. He reasoned:

> Mr. Saucier's compensation rate for the period covered by the retroactive payment was $385.09 and the period of retroactive benefits [ordered in the May 2008 decree] was approximately 104 weeks from April 25, 2006 through April 27, 2008. Without offsets or statutory interest, 104 weeks of benefits would amount to a retroactive payment of $40,049.36. Where the prior decree in this matter ordered an offset of unemployment benefits received during this period, the $35,085.52 is sufficiently similar to the unreduced award to support Ms. Webber's testimony that the $35,085.52 payment covered a period of 104 weeks.

The ALJ's findings are supported by competent evidence. He did not err in finding that Cianbro paid at least 520 weeks of incapacity benefits.

B. Maximum Medical Improvement and Permanent Impairment

[¶11] Mr. Saucier argues that the ALJ erred in finding that he had reached MMI, and thus the ALJ's determination regarding PI is not valid.

[¶12] "Maximum Medical Improvement" is "the date after which further recovery and restoration of function can no longer be reasonably anticipated, based upon reasonable medical probability." 39-A M.R.S.A. § 102(15) (Supp. 2018). "'Permanent impairment' means any anatomic or functional abnormality or loss existing after the date of MMI that results from the injury." *Id.* at § 102(15). The ALJ's findings regarding MMI and PI are based on Dr. Kimball's medical findings in reports issued in 2016 and 2007 pursuant to 39-A M.R.S.A. § 207 (Supp. 2018).

[¶13] Mr. Saucier contends that Dr. Kimball's reports do not provide competent evidence that Mr. Saucier had reached MMI because Dr. Kimball's opinion is inconsistent with factual findings in the 2008 decree that describe a serious condition of the lumbar spine, and was expressly rejected by the ALJ in the April 28, 2016, decree. Mr. Saucier also points to a finding in Dr. Kimball's 2007 report—that his condition in 2006 merited further medical investigation and possible treatment—as undermining the ALJ's finding that he had reached MMI. Further, Mr. Saucier contends that the MMI finding is contradicted by medical records from his treating physicians who recommended additional treatment, for which Cianbro had denied payment.

[¶14] We disagree with Mr. Saucier's contentions. In the October 2016 decree, the ALJ explained that he had previously rejected the findings in Dr. Kimball's 2007 report only insofar as they were inconsistent with the findings in the

2008 decree pertaining to causation. The ALJ did not find that Dr. Kimball's assessment of PI from the 2002 work injury was inconsistent with findings in the 2008 decree. Moreover, the ALJ expressly rejected the argument that the condition for which Dr. Kimball assessed PI in 2007 does not comport with the nature of the 2002 injury as found by the board in 2008. He concluded in his additional findings that Dr. Kimball's assignment of 5% permanent impairment is "consistent with the Board's prior determinations regarding the character of Mr. Saucier's low back injury," and corresponds with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) DRE thoraco-lumbar category II. We find no error in this assessment.

[¶15] Additionally, although Dr. Kimball may have found in the 2007 report that the 2006 incident merited further medical investigation, he also found, nine years later in the 2016 report, that the 2006 incident was merely a transient event that did not contribute in a significant manner to Mr. Saucier's condition. Thus, that finding in the 2007 decree does not undermine the finding of MMI or the PI assessment in 2016.

[¶16] Finally, although there is evidence in the record from Mr. Saucier's treating physicians that may support a conclusion that MMI had not been reached, the ALJ, as the fact-finder and sole judge of the credibility of witnesses, was well within his authority to choose between conflicting versions of the facts. Thus, we

find no error in the ALJ's decision to credit Dr. Kimball's assessment of MMI, and ultimately, permanent impairment. *See Mailman's Case,* 118 Me. 172, 177, 106 A. 606, 608 (1919) ("If there is direct testimony which, standing alone and uncontradicted, would justify the decree[,] there is [sufficient] evidence, notwithstanding its contradiction by other evidence of much greater weight.").

[¶17] Dr. Kimball expressly stated in the 2016 report that "No ongoing treatment is medically necessary related to the 2002 injury," and that "Mr. Saucier has been stable for many years." He also observed in 2016 that, in conjunction with his 2007 report, he had concluded that Mr. Saucier had reached MMI. He further opined in his 2007 report, and reiterated in his 2016 report, that Mr. Saucier's PI rating was 5% with respect to his 2002 injury. Dr. Kimball's report is competent evidence of MMI and PI for that injury.

[¶18] The ALJ did not err when concluding that Cianbro met its burden to establish that Mr. Saucier's permanent impairment rating is below the statutory threshold.[1]

III. CONCLUSION

[¶19] The ALJ's finding that Cianbro has paid the statutorily required number of weeks of partial incapacity benefits is supported by competent evidence. In

[1] Because we affirm on these grounds, we do not need to address whether or how Mr. Saucier met his burden of production under *Farris*. *See Ibbitson v. Sheridan Corp.*, 422 A.2d 1005, 1011 (Me. 1980).

concluding that Mr. Saucier has reached MMI and that his permanent impairment is below the section 213(2) threshold, the ALJ did not misconceive or misapply the law, and the relevant findings are supported by competent evidence. The ALJ's order that Cianbro may cease benefits payments is valid and legally supported.

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. 2018).

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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