ANDREW GELINAS
(Appellee)

v.

CENTRAL MAINE POWER
(Appellant)

and

CROSS INSURANCE
(Administrator)

Argued: June 14, 2018
Decided: July 26, 2019

PANEL MEMBERS: Administrative Law Judges Goodnough, Elwin, and Pelletier
BY: Administrative Law Judge Pelletier

[¶1] Central Maine Power Company (CMP) appeals from a decision of a Workers' Compensation Board Administrative Law Judge (*Stovall, ALJ*) granting Andrew Gelinas's Petition for Award regarding a September 18, 2014, gradual back injury.[1] CMP argues that the ALJ erred in finding that Mr. Gelinas had established timely notice pursuant to 39-A M.R.S.A. § 301 (Supp. 2018) because the record lacks competent evidence to support that fact. We affirm the decision.

[1] The petition originally asserted a January 26, 2015, date of injury. Relying on Mr. Gelinas's testimony, the ALJ on his own motion amended the date of injury to September 18, 2014 (the date when Mr. Gelinas underwent related medical testing). This aspect of the decision has not been appealed.

I. BACKGROUND

[¶2] Mr. Gelinas worked on power lines for CMP for about 29 years. In 2014 his job responsibilities increased and he began traveling significantly more in a company truck. At that time, he began to experience progressively worsening back pain, which he attributed to the seat in the truck. In January 2015, Mr. Gelinas underwent an MRI, which showed that he had a disc herniation in his lower back and "a mild degree of canal stenosis noted and degenerative disc disease." At that point, Mr. Gelinas notified his supervisor of the MRI results. He filed his Petitions the following month.

[¶3] An independent medical examiner, Dr. Bradford, examined Mr. Gelinas in October 2015 pursuant to 39-A M.R.S.A. § 312 (Supp. 2018), and indicated that the gradual back injury manifested on January 26, 2015. The ALJ rejected the examiner's opinion regarding the date of injury, citing Mr. Gelinas's testimony as clear and convincing evidence to the contrary. The ALJ instead found that the gradual injury manifested itself in 2014, and that Mr. Gelinas was aware during that time that the cause of his back pain was the seat in the company truck. The ALJ established the date of injury as September 18, 2014, which was the date on which Mr. Gelinas underwent X-ray imaging of his back.

[¶4] On the issue of notice, the ALJ found that "[Mr. Gelinas] informed [CMP] of what he knew when he knew it," and specifically that Mr. Gelinas "directly

connected his back problems to a faulty seat in his work truck and in a timely manner told his supervisor about that fact." Having established timely notice, the ALJ amended the date of injury and granted Mr. Gelinas's Petition for Award relating to that injury.[2]

[¶5] CMP moved for additional findings of fact and conclusions of law pursuant to 39-A M.R.S.A. § 318 (Supp. 2018), which the ALJ granted, amending the decree on issues not related to this appeal without changing the outcome. CMP appeals.

II. DISCUSSION

[¶6] CMP argues that the evidence relied upon by the ALJ in finding that Mr. Gelinas gave timely notice of his claim was not competent to support that fact. We disagree.

[¶7] The dispute on appeal centers around the following testimony by Mr. Gelinas:

> Q. . . . [W]hat were you feeling physically that caused you to go three days a week?
> A. Just the stiffness, the soreness was increasing. The—just from the traveling.
> Q. And, in fact, the First Report indicates, "Significant travel for the job and result of seat in truck."
> A. Yes.
> Q. That's information that came from you, I take it.
> A. Yes.

[2] The ALJ ruled on multiple other petitions filed by Mr. Gelinas. No appeal was taken from those petitions.

> Q. So this is the extra traveling you started doing in the summer of 2014.
> A. Yes.
> Q. And what was it about the seat that caused you—
> A. That truck is being operated twenty-four/seven, so there's three other individuals in the—driving that seat and the bottom of the seat was just—there was no support whatsoever.
> Q. So you could—you knew back in the summer of 2014 that it was the seat.
> A. I thought it was the seat, yes.
> Q. Yeah. And you were complaining about the seat?
> A. Complained to the supervisor. Also had two other individuals that complained also.

[¶8] The ALJ found that Mr. Gelinas "directly connected his back problems to a faulty seat in his work truck and in a timely manner told his supervisor about that fact." CMP, referring to the above testimony, argues that it establishes only the fact that Mr. Gelinas complained about the seat, and does not support a finding that he notified CMP of the potential causal connection between the seat and his back pain, citing *Farrow v. Carr Bros.*, Inc., 393 A. 2d 1341, 1344 (Me. 1978).

[¶9] "[W]here [an ALJ] has relied upon an inference to reach a conclusion we are obligated to review his reasoning to determine whether the evidence permits such an inference to be drawn." *Murray v. T.W. Dick Co.*, 398 A.2d 390, 392 (Me. 1979); *Dumont v. AT&T Mobility Services*, Me. W.C.B. No. 19-11, ¶ 6 (App. Div. 2019). It is a permissible part of the fact-finding process to make rational inferences from testimony in its whole context. *See Overlock v. Eastern Fine Paper*, 314 A. 2d 56, 58-59 (Me. 1974); *Briggs v. H & K Stevens, Inc.*, Me. W.C.B. No. 15-18,

¶ 1 (App. Div. 2015). An inference must "logically be drawn from proof of other facts. An inference must be based on probability and not on mere possibilities or on surmise or conjecture and must be drawn reasonably and supported by the facts upon which it rests." *Murray*, 398 A.2d at 392 (quotation marks omitted).

[¶10] In the context of Mr. Gelinas's entire testimony, it was reasonable for the ALJ to infer that Mr. Gelinas informed the supervisor that the seat was the source of his low back pain. Although Mr. Gelinas did not explicitly testify that he complained about the seat as the cause of his injury, the ALJ's finding that he informed CMP of his back problems when reporting the faulty seat is a reasonable and logical inference, more than mere surmise or conjecture, derived from competent evidence. *See Grant v. Georgia-Pacific Corp.*, 394 A.2d 289, 290 (Me. 1978).

[¶11] Moreover, the *Farrow* case is distinguishable. In *Farrow*, the employee began to experience symptoms in his right knee while working as a carpenter. 393 A.2d at 1342. He approached his supervisor and explained that he was having problems with his knee and needed to take part of the next day off to see a doctor, but he did not inform the supervisor that he considered the injury to be work related. *Id.* The Law Court affirmed the Commissioner's decision that notice was inadequate, reasoning that the notice provision of the Act requires a claimant to state the cause of the disability and that this "requirement is not met simply by informing the

employer of the mere fact of an injury; the employer must also receive some indication that the injury might be *work related* and therefore compensable." *Id*. at 1344 (emphasis in original).

[¶12] Unlike in Farrow, the ALJ here found that Mr. Gelinas reported his back injury and that it was work related within the statutory time frame. That finding is supported by competent evidence and the reasonable inferences drawn therefrom.[3]

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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[3] Because we affirm on this basis, we do not need to address CMP's arguments about the apportionment of incapacity between compensable and non-compensable injuries pursuant to 39-A M.R.S.A. § 201(5) (Supp. 2018).