BARBARA LABBE
(Appellee)

v.

EASTERN MAINE MEDICAL CENTER
(Appellant)

and

EASTERN MAINE GROUP
(Insurer)

Conference held: September 27, 2018
Decided: August 29, 2019

PANEL MEMBERS: Administrative Law Judges Hirtle, Goodnough, and Stovall
BY: Administrative Law Judge Stovall

[¶1] Eastern Maine Medical Center (EMMC) appeals from a decision of a Workers' Compensation Board administrative law judge (*Elwin, ALJ*) denying its Petition for Review. EMMC contends that the evidence compels the conclusion that Barbara Labbe's medical circumstances have changed, justifying a change in her entitlement to partial wage loss benefits. We disagree with EMMC's contention and affirm the ALJ's decision in all respects.

I. BACKGROUND

[¶2] Barbara Labbe was working for Eastern Maine Medical Center (EMMC) as a surgical technician when she suffered a compensable work-related right knee injury on September 29, 2010. Ms. Labbe underwent surgery and was out of work

for a time. Her primary care physician, Dr. Morse, released her to return to work in September 2013, restricted to a schedule of three days per week at eight hours per day, with four days off in a row. EMMC accommodated Ms. Labbe with modified work at her pre-injury hourly rate in a secretarial position, and paid her partial lost wage benefits. Also in 2013, Ms. Labbe developed a non-work-related cardiac condition and began to suffer migraines. These conditions have totally disabled her from any work.

[¶3] On March 5, 2014, EMMC asked Dr. Morse to approve increasing Ms. Labbe's modified work hours to full time in the same secretarial position. Dr. Morse responded:

> I think that there is no limit to the number of days/hours that Barbara can work but I do think that there are things that can be done to minimize discomfort and therefore reduce the number of days called in for recuperation. This includes 3 or 4 day work weeks and spacing the days out for recovery.

[¶4] One year later, in March 2015, Dr. Morse completed an M-1 form after a visit with Ms. Labbe, in which he checked the "modified duty" box and wrote "continue last restriction."

[¶5] Ms. Labbe filed a petition for award and a petition for payment of medical and related services. In a June 2015 decree, the ALJ found that "if her cardiac [condition] permitted, [Ms. Labbe] could still work three 8-hour days with

limited walking." The ALJ ordered ongoing partial incapacity benefits to be paid based on that restriction.

[¶6] EMMC filed a motion for further findings of facts and conclusions of law pursuant to 39-A M.R.S.A. § 318 (Supp. 2018). It sought clarification regarding which restriction Dr. Morse had referred to in the March 2015 M-1 form, arguing that the form referred to the opinion in his March 2014 letter, which stated there was "no limit" to the number of days/hours that Ms. Labbe could work, rather than the opinion from September 2013, which restricted her to working three days per week.

[¶7] In an amended decree dated December 15, 2015, the ALJ indicated that the operative restrictions were those of September 17, 2013. However, the ALJ further concluded:

> Even if . . . the March 3, 2015 M-1 did refer to Dr. Morse's updated response to Employer/Insurer's March 5, 2014 letter, the Board finds that Ms. Labbe could not have worked on a full time basis. Dr. Morse's recommendation that Ms. Labbe limit herself to "3 or 4 day work weeks" would have prevented her from working the full time schedule employer offered to her in August 2014. Combined with Ms. Labbe's credible testimony that her knee became swollen and painful after an 8-hour shift, the Board finds that Ms. Labbe's demonstrated ability to work 24 hours per week at the secretarial position remains the most reliable indicator of her actual earning capacity due to her work-related right knee condition.

[¶8] EMMC sought clarification from Dr. Morse regarding his opinion of Ms. Labbe's work capacity. In a January 2016 letter, Dr. Morse clarified that he intended

"no change in her work recommendations related to the letter on March 5, 2015," which had recommended a 24-hour work week.

[¶9] EMMC filed a petition for review in February 2016. At his deposition, Dr. Morse testified that his statement in the January 2016 letter did not expand the number of hours that Ms. Labbe could work from the previous restrictions.

[¶10] In a July 2017 decree, the ALJ found that Dr. Morse's most recent opinion is "no different" from his opinion of March 5, 2014, which had formed the basis for the findings in the 2015 decree, and thus the 2016 letter did not show a change in circumstances since that prior decree. The ALJ also found that "Dr. Morse noted no change in Ms. Labbe's right knee condition since her prior visit on March 3, 2015."

[¶11] EMMC filed a motion for further findings of facts and conclusions of law, which was denied. EMMC appeals.

II. DISCUSSION

[¶12] EMMC contends that Dr. Morse's updated opinion compels the conclusion that her medical circumstances have changed, and that her benefits may be decreased. We disagree.

[¶13] To increase or decrease the benefit level set by a previous decision, a party must first show a change in medical or economic circumstances. *Grubb v. S.D. Warren Co.*, 2003 ME 139, ¶ 7, 837 A.2d 117. Because EMMC had the

burden of proof on the issue of changed circumstances, it can prevail on appeal only if it can demonstrate that the evidence legally compels the finding that Ms. Labbe's medical circumstances have changed. *See Efstathiou v. Efstathiou*, 2009 ME 107, ¶ 10, 982 A.2d 339, 342; *Savage v. Georgia Pacific*, Me. W.C.B. No. 13-5, ¶ 7 (App. Div. 2013).

[¶14] Dr. Morse's testimony that the letter of January 2016 was not a change in his opinion regarding the number of hours Ms. Labbe could work, as well as the letter itself, are rational bases for the ALJ's finding that Dr. Morse's 2016 letter was no more than a reiteration of his opinion offered during the prior litigation. *See Smith v. Great N. Paper Co.*, 636 A.2d 438, 439 (Me. 1994) (a decree may be vacated if it is without a rational basis in evidence). Because the ALJ found in the 2015 amended decree that Ms. Labbe was restricted to part-time work despite Dr. Morse's 2014 opinion, the ALJ in the current round of litigation was ultimately dealing with the same facts as in the prior round. The ALJ also based her decision on Dr. Morse's finding that Ms. Labbe's right knee condition had not changed since the prior decree. Thus, the ALJ did not err when reaching the conclusion that Ms. Labbe's medical circumstances had not changed. *See McIntyre v. Great N. Paper, Inc.*, 2000 ME 6, ¶ 5, 743 A.2d 744 ("The purpose of the [changed circumstances] rule is to prevent the use of one set of facts to reach different conclusions." (quotation marks omitted)).

[¶15] The ALJ committed no legal error and her findings were supported by competent evidence, and the application of the law was neither arbitrary nor without rational foundation. *See Pomerleau v. United Parcel Serv.*, 464 A.2d 206, 209 (Me. 1983). Therefore, we affirm the ALJ's decision.

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.

Attorneys for Appellant:
Anne-Marie Storey, Esq.
John K. Hamer, Esq.
RUDMAN WINCHELL
P.O. Box 1401
Bangor, ME 04402

Attorney for Appellee:
Benjamin K. Grant, Esq.
McTEAGUE HIGBEE
P.O. Box 5000
Topsham, ME 04086