MARGARET SMITH
(Appellant)

v.

MAINE COAST HEALTHCARE CORP.
(Appellee)

and

CROSS INSURANCE TPA, INC.
(Insurer)

Argued: December 4, 2019
Decided: January 10, 2020

PANEL MEMBERS: Administrative Law Judges Collier, Chabot, and Jerome
BY: Administrative Law Judge Chabot

[¶1] Margaret Smith appeals from a decision of a Workers' Compensation Board administrative law judge (*Hirtle, ALJ*) denying her Petitions for Award of Compensation and for Payment of Medical and Related Services. Ms. Smith argues that the ALJ's decision concluding she did not meet her burden of proof on medical causation was in error. We disagree and affirm the decision.

I. BACKGROUND

[¶2] Margaret Smith works as a medical technologist for Maine Coast Healthcare. On November 28, 2017, she felt a pinch and the onset of pain in her back while bending over for approximately five to ten minutes to collect a blood sample from a patient. By the end of the day, the pain began radiating to her left leg.

[¶3] Ms. Smith started treating with her primary care physician, Dr. Peter Witham, a few days after the injury. Dr. Witham took Ms. Smith out of work on December 27, 2017, and referred her for an MRI. The MRI revealed a large left disk herniation at L5-S1. After an attempt at conservative treatment, Ms. Smith underwent surgery at the L5-S1 level on April 25, 2018. She was able to return to work full time and at regular duty as of June 6, 2018.

[¶4] In 2009, Ms. Smith suffered a nonwork-related injury to her low back. She underwent a surgical fusion of the L4-5 vertebrae on December 18, 2011. She had been asymptomatic and working without restrictions until the 2017 injury.

[¶5] Ms. Smith filed petitions alleging that her November 28, 2017, injury caused her need for the 2018 surgery and resulted in her incapacity to work for a period of time. At the hearing, she offered no expert opinion to establish medical causation. Instead, she asserted that the ALJ should infer medical causation based upon her testimony and the medical records.

[¶6] The ALJ disagreed. He concluded that absent an expert opinion, Ms. Smith failed to meet her burden of proving medical causation, and he denied her petitions. Ms. Smith filed a Motion for Further Findings of Fact and Conclusions of Law, which the ALJ granted. He issued an amended decision with additional findings, but did not change the outcome. This appeal followed.

II. DISCUSSION

A. Standard of Review

[¶7] The Appellate Division's role on appeal is "limited to assuring that the [ALJ's] factual 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). When a party requests and proposes additional findings of fact and conclusions of law, as was done in this case, the Appellate Division reviews "only the factual findings actually made and the legal standards actually applied" by the ALJ. *Daley v. Spinnnaker Indus*., 2002 ME 134, ¶ 17, 803 A.2d 446 (quotation marks omitted).

B. Burden of Proof

[¶8] At issue is whether the ALJ erred when determining that Ms. Smith did not meet her burden of proof because she did not submit an expert opinion establishing medical causation in light of her preexisting back condition.

[¶9] As a general matter, the petitioning party bears the burden to establish all elements of a claim on a more probable than not basis. *Fernald v. Dexter Shoe Co.*, 670 A.2d 1382, 1385 (Me. 1996); *see also Rowe v. Bath Iron Works Corp.*, 428 A.2d 71, 73 (Me. 1981) ("An employee petitioning for an award of compensation

. . . has the burden of proof by a preponderance of competent and probative evidence on all essential elements of [the] claim.").

[¶10] Proof of a causal relationship between an employee's work and the injury is an essential element of a Petition for Award of Compensation. *See id.* "Although medical opinion testimony is not always essential to establish causation . . . there is a 'basic necessity of establishing medical causation by expert testimony in all but the simple and routine cases.'" *Brawn v. Bangor Tire Co.*, Me. W.C.C. 97, 101 (Me. App. Div. 1983) (quoting 3A Larson, Workers' Compensation Law, § 79.61 at 15-291 (1983)). Except in cases where "causation is clear and obvious to a reasonable [person] who had no medical training[,]" an employee must rely on the opinion of a qualified medical expert to meet his or her burden of proof on the issue of medical causation. *Brawn*, Me. W.C.C. 97, 101. "Whenever the employee has a pre-existing condition, the medical issues in the case are complicated. In order to perform the analysis required by *Bryant v. Masters Machine Co.*, 444 A.2d 329 (Me. 1982) a commissioner must have expert testimony on medical causation." *Brawn*, Me. W.C.C. 97, 101; *see also Dorval v. Andtut, Inc.*, Me. W.C.C. 738, 742 (Me. App. Div. 1992).

[¶11] Ms. Smith contends that competent evidence does not support the ALJ's finding that she has a preexisting condition sufficient to trigger the requirement of expert testimony. Instead, she contends that the evidence shows a discrete,

uncomplicated injury at L5-S1, for which medical causation is clear and obvious to an untrained person.

[¶12] Specifically, because the evidence shows that she had been pain and symptom free for more than two years before the injury at issue, and the MRIs performed before the 2017 injury showed no herniation at L5-S1, Ms. Smith asserts that the prior back injury was not relevant. In her view, this is not a combined effects case requiring analysis under *Bryant*, 444 A.2d at 337 (requiring the employee with a preexisting condition to show that the employment contributed some substantial element to the risk of injury, above the personal risk that the employee brings to the employment environment) or 39-A M.R.S.A. § 201(4) (Supp. 2018) (requiring proof in a combined effects case that "any resulting disability is compensable only if contributed to by the employment in a significant manner"). Thus, she contends the ALJ was permitted to infer medical causation without an expert opinion.

[¶13] We disagree with Ms. Smith's contentions. The ALJ heard the testimony, evaluated the medical records, and determined that this was not a simple and routine case given Ms. Smith's preexisting spinal injury, which required a fusion at one level up from the November 2017 injury. Because this case involved a prior back injury in proximity to the alleged work injury, the ALJ did not err when he determined that this injury was sufficiently complex to require expert medical testimony on the issue of causation.

III. CONCLUSION

[¶14] The ALJ's factual findings are supported by competent evidence, the decision involved no misconception of applicable law, and the application of the law to the facts was neither arbitrary nor without rational foundation.

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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