RYAN TYLER
(Appellee)

v.

DOUGLAS DYNAMICS, INC.
(Appellant)

and

THE CHARTER OAK FIRE INSURANCE COMPANY
(Insurer)

Argued: August 20, 2020
Decided: October 29, 2021

PANEL MEMBERS: Administrative Law Judges Stovall, Chabot, and Pelletier
By: Administrative Law Judge Stovall

[¶1] Douglas Dynamics, Inc., appeals from a decision of a Workers' Compensation Board administrative law judge (*Elwin, ALJ*) granting Ryan Tyler's Petition for Award and Petition for Payment of Medical and Related Services. Douglas Dynamics contends that the ALJ erred in finding that Mr. Tyler met his burden of proving that his psychological conditions are related to his physical work injury, and that Mr. Tyler is entitled to total incapacity benefits. We disagree with Douglas Dynamics' contentions and affirm the ALJ's decision in all respects.

I. BACKGROUND

[¶2] Mr. Tyler is a welder and began employment with Douglas Dynamics in February of 2017. The ALJ found that on May 30, 2017, he sustained a back injury

with left leg radiculopathy as a result of a lifting and twisting incident at work. In addition to finding a physical work injury, the ALJ found that Mr. Tyler's anxiety and depression were related to his physical injury. The ALJ issued an amended decree dated October 7, 2019, finding that Mr. Tyler began treatment for depression and anxiety with Lydia Richards, LCSW, after the work injury. The amended decree reads, in relevant part:

> Ms. Richards' treatment focuses entirely on helping Mr. Tyler cope with his pain and his inability to engage in activities he previously enjoyed. Mr. Tyler's past medical history included diagnoses of depression and anxiety, for which he may have been prescribed medication (although Trazodone appears to have been prescribed as a sleep aid, rather than as an anti-depressant). Nevertheless, Mr. Tyler required no counseling for these conditions, which worsened due to the chronic back pain and activity restriction caused by his work injury.

After reviewing the medical records, the ALJ found that "Mr. Tyler's treatment for depression and anxiety since February 2018 is caused by his May 30, 2017 work injury."

[¶3] On appeal, Douglas Dynamics argues that Mr. Tyler was not credible regarding his mental health issues. Douglas Dynamics alleges that Mr. Tyler was treated for depression and anxiety as recently as May of 2017. The basis of this assertion is two notations in medical records dated May 6, 2017, and May 9, 2017. On May 6, 2017, Mr. Tyler's admission diagnoses states, "[p]eriapical abscess without sinus."[1] Under final diagnoses, that same report reads, "[p]eriapical abscess

[1] Douglas Dynamics mistakenly referred to the date of the medical report as May 5, 2017.

without sinus, [o]ther specified anxiety disorders, [o]ther chronic pain and Nicotine dependence, cigarettes, uncomplicated." In the May 9, 2017, report, under medical history, Mr. Tyler was noted to have a past medical history of depression and anxiety.

[¶4] Douglas Dynamics contends that the above medical evidence supports the theory that Mr. Tyler was treating for anxiety and depression shortly before the work injury. Based on this argument, Douglas Dynamics asserts that treatment for these psychological conditions after the date of injury is not compensable.

[¶5] Douglas Dynamics also argues that based upon the deposition testimony of Dr. Donovan—who opined that it is "possible" for Mr. Tyler to attempt a sedentary job—the ALJ erred when awarding total incapacity benefits. Douglas Dynamics additionally argues that the ALJ's referral of the case to vocational rehabilitation was inconsistent with the finding of total incapacity, and therefore the ALJcommitted legal error.

II. DISCUSSION

A. The Burden of Proving a Mental Sequelae Injury

[¶6] A mental or psychological abnormality which is "caused by [a physical work] injury, or … a preexisting state of mental abnormality or sub-abnormality [which] was excited and caused to flame up with overpowering vigor by the injury"

is compensable. *Reynold's Case*, 128 Me. 73, 75, 145 A. 455, 456 (1929); *see also Cote v. Osteopathic Hosp. of Me., Inc.*, 447 A.2d 75, 76 (Me. 1982).

[¶7] Douglas Dynamics' argument that Mr. Tyler's psychological conditions are not compensable is based squarely upon the premise that Mr. Tyler denied having any prior mental health issues, and therefore the ALJ based her decree on misleading information. However, the ALJ's findings were not predicated on a lack of preexisting history of Mr. Tyler's depression and anxiety. To the contrary, the ALJ specifically found that "Mr. Tyler's past medical history involved diagnoses of depression and anxiety." The ALJ further found, based on Mr. Tyler's psychological records, that as of February 2018, his psychological "… treatment focuse[d] entirely on helping Mr. Tyler cope with pain and his inability to engage in activities he previously enjoyed." Because the ALJ's findings were not based upon misleading information, Douglas Dynamics' argument has no merit.

[¶8] The fact that an employee has a preexisting depression and anxiety condition does not, by itself, bar compensability. "It is settled law in Maine that an employee need not prove that a personal injury arising out of and in the course of his employment constituted the sole cause of his ultimate disability." *Richardson v. Robbins Lumber, Inc.*, 379 A.2d 380, 382 (Me. 1977) (citing *MacLeod v. Great*

N. Paper Co., 268 A.2d 488, 489 (Me. 1970)).[2] After finding that Mr. Tyler suffered from preexisting depression and anxiety, the ALJ found that these conditions did not require counseling prior to the work injury. Following the work injury, however, the ALJ found his depression and anxiety "worsened due to the chronic back pain and activity restriction caused by his work injury." This finding was made based upon a review of Mr. Tyler's "detailed treatment records."

[¶9] The ALJ's finding that Mr. Tyler sustained a compensable mental injury as a sequela to his physical injury is based on competent evidence.

B. Award of Total Incapacity Benefits

[¶10] Douglas Dynamics asserts that the ALJ erred in finding Mr. Tyler is entitled to total incapacity benefits. Dr. Matthew Donovan, who examined Mr. Tyler pursuant to 39-A M.R.S.A. § 312 (Pamph. 2020), wrote in his report that "Mr. Tyler does not exhibit any realistic work capacity… [h]is incapacity to work is entirely related to the 5/30/2017 work injury." During his deposition, Dr. Donovan testified as follows:

> Q. In your opinion, could Mr. Tyler perform work if it were sort of sedentary in nature and allowed him to sit, stand, move around as needed?
>
> A. I think that's possible.

[2] *See also Barrett v. Herbert Eng'g, Inc.*, 371 A.2d 633, 636 (Me. 1977); *Oliver v. Wyandotte Indus. Corp.*, 360 A.2d 144, 147 (Me. 1976); *Canning v. State Dep't of Transp.*, 347 A.2d 605, 609 (Me. 1975).

[¶11] Dr. Donovan's deposition testimony—that it is *possible* the employee *could* perform some work—falls short of a medical opinion that Mr. Tyler has work capacity. Our opinion aligns with Maine jurisprudence on the issue of work capacity. For example, in *Grant v. Georgia-Pacific Corp.*, 394 A.2d 289 (1978), the Law Court held that a physician's opinion that an employee "may try to work" and "I think it may be a good idea to try and see what he can do" was insufficient to meet the employer's burden of proof of changed circumstances when the employer had argued the employee was no longer entitled to total incapacity benefits. *Id.* at 291. Specifically, the *Grant* court stated that the speculative language regarding work capacity was "a far cry from saying 'in my opinion, he does have work capacity.'" *Id*.

[¶12] The ALJ's finding of total incapacity is based upon competent evidence. Dr. Donovan opined that Mr. Tyler lacked "realistic" work capacity due to chronic pain, muscle atrophy, and workplace deconditioning. The ALJ made an appropriate finding that Dr. Donovan's speculative deposition testimony discussing a remote future possibility of engaging in a work environment did not rise to the level of formal work capacity.

C. Vocational Rehabilitation

[¶13] Douglas Dynamics also argues that the ALJ's referral of Mr. Tyler to the Office of Medical and Rehabilitation Services is inconsistent with the finding of total incapacity. Under 39-A M.R.S.A. § 217(1) (Pamph. 2020), the board has authority to refer an employee for vocational rehabilitation for "evaluation of the need for and kind of service, treatment or training necessary and appropriate to return the employee to suitable employment." The only requirement for such referral is that "as a result of injury the employee is unable to perform work for which the employee has previous training or experience." 39-A M.R.S. § 217(1). Based upon the ALJ's finding that it is unlikely that he can return to his career in the welding trade, we find the referral of Mr. Tyler for vocational rehabilitation services was neither arbitrary nor without rational foundation.

III. CONCLUSION

[¶14] The ALJ committed no legal error, the findings were supported by competent evidence, and the application of the law was neither arbitrary nor without a rational foundation. *See Moore v. Pratt & Whitney Aircraft*, 669 A.2d 156, 158 (Me. 1995). 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. 2020).

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.

Attorney for Appellant:
Timothy J. Wannemacher, Esq.
ROBINSON, KRIGER & McCALLUM
12 Portland Pier
Portland, ME 04101

Attorney for Appellee:
Benjamin I. Grant, Esq.
KAPLAN & GRANT
136 Commercial Street, Suite 302
Portland, ME 04101