STATE OF MAINE
WORKERS' COMPENSATION BOARD

APPELLATE DIVISION
Case No. App. Div. 20-0031
Decision No. 22-21

HUNG HUYNH
(Appellee)

v.

PARKER HANNIFIN CORPORATION
(Appellant)

and

CHUBB INDEMNITY INSURANCE COMPANY
(Insurer)

Argument held: April 28, 2021
Decided: July 28, 2022

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

[¶1] Parker Hannifin Corporation appeals from a decision of a Workers' Compensation Board administrative law judge (*Collier, ALJ*) granting Hung Huynh's Petitions for Award and for Payment of Medical and Related Services regarding four dates of injury. The ALJ also granted Parker Hannifin's Petition for Apportionment. Parker Hannifin asserts that the ALJ erred by (1) determining that the independent medical examiner's (IME's) deposition testimony altered the findings in his report regarding the duration of the 2013 date of injury; (2) finding that the effects of the 2013 injury are continuing absent competent evidence to

support that finding; and (3) finding that the effects of the 2017 injury ended.[1] We affirm the decision in all respects.

I. BACKGROUND

[¶2] Mr. Huynh began working for Parker Hannifin in 1998 as a machine operator until he moved away in 2000. He returned to Maine in 2005 and was re-hired for the same position at Parker Hannifin. Mr. Huynh underwent a pre-employment physical examination and was deemed medically fit for employment with no problems with his hands, arms, shoulders, or neck. The business changed ownership in 2016 to Nichols Portland. Mr. Huynh continued to work as a machine operator.

[¶3] Mr. Huynh sustained work-related injuries to his hands in 2010, his neck and right upper extremity in 2013 and 2017, and his right wrist and hand in 2018. He filed Petitions for Award and for Payment of Medical and Related services in 2019. Parker Hannifin filed a Petition for Award and Apportionment that same year. Pursuant to 39-A M.R.S.A. § 312, Dr. Donovan, the IME, performed an examination of Mr. Huynh. In addition to his report, Dr. Donovan provided testimony at

---

[1] Parker Hannifin also asserted, for the first time, in its reply brief, that the ALJ was required to address 39-A M.R.S.A. § 201(4) to determine whether Mr. Huynh had established legal cause regarding the gradual injury because his cervical condition was preexisting. By failing to make an argument based on section 201(4) until after the ALJ issued his decision, Parker Hannifin forfeited consideration of that issue. *See Morey v. Stratton*, 2000 ME 147, ¶¶ 8-10, 756 A.2d 496 (emphasizing "the importance of bringing the specific challenge to the attention of the trial court at a time when the court may consider and react to the challenge"). Accordingly, we do not address the merits of this argument.

a deposition. An ALJ is required to adopt an IME's medical findings absent clear and convincing contrary evidence in the record.[2]

[¶4] The ALJ issued a decision adopting the IME's report and testimony. The ALJ concluded that the 2010 injury had resolved by 2019. In the IME's written report, he concluded that the 2013 injury was a significant aggravation of preexisting cervical spondylosis and that it had resolved as of 2014. However, the IME testified that Mr. Huynh's work activities contributed to both the development and an aggravation of his underlying cervical spondylosis. The ALJ adopted the IME's opinion as clarified by his deposition testimony to conclude that the 2013 injury had not resolved. The ALJ supported this conclusion with a report from Dr. Hall and with Mr. Huynh's testimony. The ALJ again adopted the IME's findings in determining that the 2017 injury resolved in 2019.

[¶5] The ALJ further concluded that the 2013 and 2017 injuries combined from November 21, 2017, to April 11, 2019, to require medical treatment. Based on the IME's testimony, the ALJ determined that Parker Hannifin and Nichols Portland share equal responsibility for the medical treatment during that time, and after April

---

[2] Title 39-A M.R.S.A. § 312(7) provides:

> The board shall adopt the medical findings of the independent medical examiner unless there is clear and convincing evidence to the contrary in the record that does not support the medical findings. Contrary evidence does not include medical evidence not considered by the independent medical examiner. The board shall state in writing the reasons for not accepting the medical findings of the independent medical examiner.

11, 2019, the entire responsibility for medical costs reverts to Parker Hannifin. Parker Hannifin filed a motion for findings of facts and conclusions of law, which the ALJ denied. This appeal followed.

II. DISCUSSION

[¶6] The role of the Appellate Division "is limited to assuring that the [ALJ's] 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) (quotation marks omitted). Because Parker Hannifin requested findings of fact and conclusions of law following the decision, the Appellate Division will "review only the factual findings actually made and the legal standards actually applied by the [ALJ]." *Daley v. Spinnaker Indus., Inc.*, 2002 ME 134, ¶ 17, 803 A.2d 446.

[¶7] Parker Hannifin asserts that the ALJ erred in determining that the IME's deposition testimony altered the findings in the IME's report regarding the 2013 injury and contends that the record lacks competent evidence to support the finding that the effects of that injury continue. Parker Hannifin also argues that the ALJ erred in concluding that the effects of the 2017 injury had ended when the IME testified that Mr. Huynh's work activities throughout his employment contributed to the injury. We disagree.

[¶8] The ALJ did not reject the IME's medical findings, but interpreted ambiguous medical findings regarding the duration of the 2013 and 2017 dates of injury. When confronted with potentially ambiguous language in a report from an IME, or when there is ambiguity between an IME's report and deposition testimony, "it is incumbent on the [ALJ] to consider the larger context in which those statements are offered to construe the intent of the examining physician." *Oriol v. Portland Housing Auth.*, Me. W.C.B. No. 14-35, ¶ 12 (App. Div. 2014); *see also Thurlow v. Rite Aid*, Me. W.C.B. No. 16-23, ¶ 13 (App. Div. 2016) (holding that section 312 does not compel the adoption of the IME's medical findings when those findings are ambiguous); *Gurney v. Rumford Group Homes*, Me. W.C.B. No. 16-42, ¶ 3 (App. Div. 2016) (holding that the ALJ's reference to a medical report not provided to the IME was permissible when interpreting ambiguous IME findings).

[¶9] With regard to the 2013 date of injury, Dr. Donovan stated in his report that Mr. Huynh's work activities significantly aggravated the preexisting spondylosis. In his deposition, however, Dr. Donovan stated that his work activities had contributed to the development of the condition. The ALJ construed the IME's deposition testimony and report as a whole to find that the 2013 injury's effects had not ended, noting that:

> Although [the IME] concluded in his written report that this aggravation had resolved as of September 8, 2014, he explained in his deposition testimony that the work activity had *contributed not only to an aggravation of symptoms from the spondylosis but also the*

> *development of the condition itself*. He also testified that the condition itself—the underlying cervical spondylosis—has not gone away. This is consistent with Dr. Hall's report of August 9, 2018 and also with Mr. Huynh's testimony. Therefore, I adopt Dr. Donovan's opinion as clarified by his testimony … that this work injury has not yet resolved.

(Emphasis added).

[¶10] Regarding the 2017 injury, Parker Hannifin contends the ALJ erred when finding that the effects of the injury 2017 injury had concluded as of April 2019, when the IME had testified in his deposition that the work activities contributed to the development of the spondylosis throughout the employment. Again, the ALJ was faced with conflicting statements in the IME's report and deposition, which he resolved as follows:

> Nichols Portland argues that any aggravation of Mr. Huynh's underlying cervical condition that was caused by work performed after it took over ownership of the company (in April of 2016) was time-limited and had resolved by the time of [the IME's] examination of April 11, 2019. I am persuaded that this is the best reading of [the IME's] written report as supplemented by his deposition testimony. Although there are some portions of [the IME's] deposition testimony that can be read to suggest an ongoing work contribution to the progression of the condition of spondylosis, particularly his statement that the work activity may have contributed up through the 2018 MRI scan, the clearest testimony was when he was asked directly whether the progression from 2014 to 2018 was contributed to by work activity. [The IME] responded: "what seems to be at issue here is what the contribution was from work as far as creation of degenerative spondylosis, and my feeling on that is that the progression, work contributed *not in a substantial fashion to the progression* of the disease but work did contribute significantly to the aggravation of what was present there." A follow-up question referred to his written report, characterizing his opinion as stating "that the work activities . . . from April of 2016 up through when you saw him, did not contribute to the

condition in a significant manner. Does that remain your opinion on this?" [The IME] responded: "I believe it does."

[¶11] The ALJ's interpretation of the IME's testimony and report regarding the effects of the 2013 and 2017 injuries, viewed within the larger context in which those statements were offered, supports the ALJ's ultimate findings that the effects of the 2013 injury had not ended and the effects of the 2017 injury had ended. Therefore, we do not disturb those findings on appeal. *See Pomerleau v. United Parcel Serv.*, 464 A.2d 206, 209 (Me. 1983); *Dillingham v. Great N. Paper*, Me. W.C.B. No. 15-7, ¶ 3 (App. Div. 2015).

III. CONCLUSION

[¶12] The ALJ's 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.

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 Parker Hannifin:
Cara L. Biddings, Esq.
Robinson, Kriger & McCallum
Twelve Portland Pier
Portland, ME 04101

Attorney for Appellee Hung Huynh:
Daniel F. Gilligan, Esq.
Troubh Heisler
511 Congress Street, Suite 700
P.O. Box 9711
Portland, ME 04104

Attorney for Appellee Nichols Portland:
Bradford A. Pattershall, Esq.
Norman Hanson DeTroy
Two Canal Plaza
P.O. Box 4600
Portland, ME 04112