EUGENIE HOPKINS
(Appellee)

v.

SEBASTICOOK VALLEY HEALTH
(Appellant)

and

CROSS INSURANCE TPA, INC.
(Insurer)

Argued: September 30, 2021
Decided: August 30, 2022

PANEL MEMBERS: Administrative Law Judge: Knopf, Pelletier, and Stovall
BY: Administrative Law Judge Pelletier

[¶1] Sebasticook Valley Health appeals from a decision of a Workers' Compensation Board administrative law judge (*Hirtle, ALJ*) granting in part Eugenie Hopkins' Petitions for Award and for Payment of Medical and Related Services. The ALJ awarded Ms. Hopkins the protection of the Act and payment of medical charges related to injuries to her low back and left hip on January 13, 2016, and to her low back on January 21, 2018. Although Sebasticook concedes that Ms. Hopkins sustained work injuries on those dates, it contends the back injuries are not compensable because she had a preexisting back condition and did not meet her burden to show that her employment made a significant contribution to her disability pursuant to 39-A M.R.S.A. § 201(4). We affirm the decision.

[¶2] Ms. Hopkins is an office worker at Sebasticook Valley Health. On January 13, 2016, she fell while exiting her car in the work parking lot, injuring her low back and hip. While at work on November 21, 2018, she bent forward to pick up a mouse pad that had fallen off her desk when she felt the onset of severe low back pain radiating to her left lower extremity. Ms. Hopkins was diagnosed with a herniated lumbar disc at L4-5, related to the work incidents. She also had preexisting degenerative lumbar disc disease and SI joint arthritis. She filed Petitions for Award and for Payment of Medical and Related Services for both dates of injury.[1] Because this case involved a preexisting condition, the ALJ applied section 201(4) to assess the compensability of Ms. Hopkins' condition. Section 201(4) provides:

> **Preexisting condition.** If a work-related injury aggravates, accelerates or combines with a preexisting physical condition, any resulting disability is compensable only if contributed to by the employment in a significant manner.

[¶3] Dr. Richard Mazzei, who examined Ms. Hopkins pursuant to 39-A M.R.S.A. § 312,[2] found that 75% of Ms. Hopkins's resulting disability is related to her preexisting degenerative lumbar disc disease and joint arthritis, and 25% is related to the work injuries (12.5% on account of each date of injury). Consistent with these medical findings, the ALJ determined that the disability due to the

[1] Ms. Hopkins also filed Petitions for a January 11, 2016 date of injury, which are not at issue on appeal.

[2] Accordingly, the ALJ was required to "adopt the medical findings of the independent medical examiner unless there [was] clear and convincing evidence to the contrary in the record that does not support the medical findings." 39-A M.R.S.A. § 312(7)

combined effects of Ms. Hopkins' preexisting condition and her work injuries is compensable under section 201(4).

[¶4] Sebasticook contends that ALJ erred because in its view, the 12.5% contribution from each injury to the resulting disability cannot as a matter of law be considered a "significant" employment contribution. *See Derrig v. Fels Co.* 1999 ME 162, ¶ 6, 747 A.2d 580. Sebasticook suggests that we adopt a bright line rule that the employment contribution must exceed 50% to constitute a significant contribution to the disability. Sebasticook cites no authority for this proposition and our research has disclosed none.

[¶5] Regarding the employment contribution, Dr. Mazzei opined that the work injuries significantly aggravated Ms. Hopkins' preexisting condition by causing persistent symptoms of low back pain that required medical treatment. The ALJ relied on this finding and Dr. Mazzei's assessment of a 12.5% contribution from each injury when concluding that Ms. Hopkins' employment contributed to the resulting disability in a significant manner. We find no error in this determination. *See Pouzol v. L. Blanchette & Sons, Inc.,* Me. W.C.B. No. 16-8, ¶ 12 (App. Div. 2016) (affirming the ALJ's decision that the employment contributed to the resulting disability in a significant manner despite adoption of a section 312 examiner's opinion that the resulting disability was 95% due to the preexisting condition); *see also Celantano v. Dep't of Corr.*, 2005 ME 125, ¶ 18, 887 A. 2d 512 (determining

that a relatively trivial incident, tripping over a table leg, that aggravated the employee's preexisting asymptomatic condition constituted employment activity that contributed to the employee's disability in a significant manner); *Bowker v. NFI North, Inc.*, Me. W.C.B. No. 16-10, ¶ 22 (App. Div. 2016) (holding that a relatively minor work activity that caused an exacerbation of a symptomatic preexisting condition and rendered the employee disabled constituted a significant employment contribution under section 201(4)).

[¶6] Dr. Mazzei's initial use of percentages came in response to the question whether he could "apportion" the incapacity between the work injuries and a *subsequent nonwork condition*. That question related to the potential application of 39-A M.R.S.A. § 201(5), not 201(4). Section 201(5) applies when the employee has sustained a *subsequent* nonwork injury;[3] and requires the board to separate out the effects of causally unconnected subsequent nonwork injuries or conditions when awarding benefits, *see Pratt v. Fraser Paper, LTD*, 2001 ME 102, ¶ 12, 774 A.2d 351. Thus, percentage contributions to the disability are highly relevant under section 201(5). When a nonwork-related condition preexists the work injury, however, the entire benefit is awarded without reduction for the preexisting

[3] Section 201(5) provides:

> **Subsequent nonwork injuries**. If an employee suffers a nonwork-related injury or disease that is not causally connected to a previous compensable injury, the subsequent nonwork-related injury or disease is not compensable under this Act.

condition under section 201(4). *See, e.g., Spear v. Town of Wells*, 2007 ME 54, ¶ 13, 992 A.2d 474 (remanding for clarification of inconsistent findings regarding whether a nonwork-related injury was a preexisting condition or a subsequent nonwork-related injury).

[¶7] In this case, the ALJ explicitly analyzed the facts under section 201(4) and Sebasticook does not contend that section 201(5) applies. Dr. Mazzei found that Ms. Hopkins' two work injuries combined with her preexisting low back condition to cause persistent symptoms requiring treatment. This, along with other evidence regarding post-injury incapacity and medical treatment, was sufficient to meet Ms. Hopkins' burden that the employment contributed to her disability in a significant manner.

[¶8] The ALJ's factual findings are based upon competent evidence, and the ALJ neither misconceived the law nor applied the law in an arbitrary or irrational fashion. *See Moore v. Pratt & Whitney Aircraft*, 669 A.2d 156,158 (Me. 1995).

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.

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