ARTHUR BROWN
(Appellee)

v.

COUNTY OF CUMBERLAND
(Appellant)

and

MAINE MUNICIPAL ASSOCIATION
(Insurer)

Argued: September 30, 2021
Decided: August 31, 2022

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

[¶1] The County of Cumberland appeals a decision of a Workers' Compensation Board administrative law judge (*Chabot, ALJ*) granting Arthur Brown's Petition for Award of Compensation. The County contends the ALJ erred in determining that Arthur Brown is entitled to benefits pursuant to 39-A M.R.S.A § 201(4). Specifically, the County asserts there is no competent evidence in the record that Mr. Brown's condition was medically caused by a work-related aggravation of his preexisting condition; or that the employment contributed in a significant manner to his disability. We disagree with these contentions and affirm the decision.

I. BACKGROUND

[¶2] Arthur Brown was employed by the Cumberland County Sheriff's Department when he slipped and fell on ice, injuring himself, while returning to his car from a call. Mr. Brown testified that he landed on the firearm holstered on his right hip. Although initial treatment focused on Mr. Brown's back, the focus became his right hip and groin. He filed a petition for award seeking payment of incapacity benefits.

[¶3] At his hearing, Mr. Brown repeatedly denied having any relevant preexisting conditions, but the ALJ was convinced by the medical records that he had a right hip labral tear, diagnosed in 2013 with pain beginning in June 2012. By the time the January 3, 2019, work injury occurred, Mr. Brown had end-stage osteoarthritis in his right hip, which ultimately required replacement.

[¶4] Having found that Mr. Brown suffered from a preexisting condition notwithstanding his testimony, the ALJ analyzed this case pursuant 39-A M.R.S.A § 201(4). *See Celentano v. Dep't of Corr.*, 2005 ME 125, 887 A.2d 512; *Bryant v. Masters Machine*, 444 A.2d 329 (Me. 1982). The ALJ relied on Dr. Howard Jones's section 207 opinion to find medical causation. Ultimately, the ALJ concluded that the "work-related injury of January 3, 2019 contributed to his disability in a significant manner," granted Mr. Brown's petition for award of incapacity, and awarded incapacity benefits. The County requested further findings

of fact and conclusions of law and submitted proposed findings. The ALJ declined to make further findings. This appeal followed.

II. DISCUSSION

A. Standard of Review

[¶5] The Appellate Division 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." *Pomerleau v. United Parcel Serv.*, 464 A.2d 206, 209 (Me. 1983). Because the County requested findings of fact and conclusions of law following the decision, the Appellate Division may "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 (quotation marks omitted). In cases where the Appellate Division reviews legal causation, the Law Court has stated that "[o]ur task is not to determine whether the [ALJ] reached the only correct conclusion but rather, whether [the ALJ's] conclusion is permissible on the record before us." *Comeau v. Me. Coastal Servs.*, 449 A.2d 362, 369 (Me. 1982).

B. Failure to Claim a Preexisting Condition

[¶6] The County argues that it was error for the ALJ to award Mr. Brown benefits based on a preexisting condition because Mr. Brown did not claim

a preexisting condition, offered no evidence of a preexisting condition, and denied the existence and knowledge of a preexisting condition.

[¶7] There is no dispute that Mr. Brown repeatedly and consistently denied suffering from a preexisting condition. The ALJ rejected that evidence and accepted the medical evidence in the record that Mr. Brown, in fact, had a preexisting condition. It is an ALJ's responsibility to review the entire record presented and determine which facts to accept and reject. The ALJ must then apply the relevant law to the facts as found. That there was other evidence in the record from which the ALJ might have reached a different conclusion does not render this finding erroneous. It was within the ALJ's purview to determine the weight and credibility to assign to that evidence. *See Sloan v. Christianson*, 2012 ME 72, ¶ 33, 43 A.3d 978 ("The trial court is not bound to accept any testimony or evidence as fact, and determinations of the weight and credibility to assign to the evidence are squarely in the province of the fact-finder."). We find no error.

C. Causation

[¶8] The County also argues that the ALJ, having found a preexisting condition, used the wrong standard for analyzing the case. Specifically, the County argues that the ALJ erred in using *Bryant* to interpret section 201(4) because that case (1) was decided years before section 201 was enacted, (2) involved legal not medical causation, and (3) did not negate the requirement that an employee prove

medical causation in a case involving a preexisting condition. The County further claims that the ALJ's resort to *Bryant* demonstrates he misunderstood the applicable standard under section 201(4). In the County's view, the ALJ employed the language quoted from *Bryant* as the standard for determining the significance of the employment's contribution to the disability. That is not how we read the decision, however.

[¶9] An injury is compensable when it "arises out of and in the course of employment," 39-A M.R.S.A. § 201; that is, "when there is a sufficient connection between the injury and the employment." *Celentano*, 2005 ME 125, ¶ 9 (citing *Comeau*, 449 A.2d 362, 366-67). At issue here is whether the injury arose out of the employment. An injury "arises out of" employment when there is "some causal connection between the conditions under which the employee worked and the injury which arose, or that the injury, in some proximate way, had its origin, its source, its cause in the employment." *Comeau*, 449 A.2d at 365 (quoting *Barrett v. Herbert Eng'g, Inc.*, 371 A.2d 633, 636 (Me. 1977)).

[¶10] In the decision, the ALJ identified section 201(4) as the applicable standard in a case involving a preexisting condition. He then cited the following portion of *Bryant*:

> (A)ny symptoms, pain or otherwise, which arises out of an increased risk of the employment because of its relation to an incident or activity in the course of employment and result in an increased level of disability by activation of a previously quiescent disease condition,

> creates a compensable disability whatever may be the specific nature of the symptoms.

Bryant, 444 A.2d at 342. He further noted that in *Bryant*, the court held entitlement may exist, in appropriate circumstances, regardless of whether the employee's preexisting condition is completely asymptomatic before the work-related activity or incident, and that a change in pathology is not dispositive to a finding of causation. *Id*. at 335.

[¶11] The case law following the enactment of section 201(4) makes clear that under that provision, the board must engage in a two-part analysis. *Derrig v. Fels*, 1999 ME 162, ¶ 6, 747 A.2d 580; *Celentano*, 2005 ME 125, ¶ 9. The first step is to determine whether there has been a work-related injury. If satisfied an injury has occurred, the board must then determine whether the employment contributed to the disability in a significant manner. The ALJ applied the standard articulated in *Bryant* to satisfy the first step in *Celentano*, namely, to determine whether a work injury had occurred. That analysis was not affected by the enactment of section 201(4) and it was not error for the ALJ to apply it.

[¶12] The ALJ then reviewed the medical evidence to determine whether Mr. Brown established medical causation. The County argued that no competent evidence supported a finding of medical causation. The ALJ concluded, however, the medical opinion of Dr. Jones, who conducted a section 207 evaluation,

established medical causation even though he provided two, somewhat inconsistent opinions.

[¶13] The ALJ determined that as a whole, Dr. Jones' opinion supports medical causation because he found "there is at least a temporal relationship" between the claimant's onset of symptoms and his work injury. He also found that the "claimant has not reach maximum medical improvement with regard to the work injury.… The claimant's options for ongoing management include repeat injection and hip arthroplasty." Lastly, Dr. Jones stated Mr. Brown's "restrictions remain reasonable and are at least temporally related to the work injury."

[¶14] The ALJ was not persuaded by Dr. Jones's subsequent report in which he indicated that any aggravation was functionally transient, and that Mr. Brown would have required surgery in any event. The ALJ found the second report at odds with the doctor's earlier conclusion that Mr. Brown was not at maximum medical improvement and still required restrictions and medical treatment on account of the injury. The ALJ also noted the records of Dr. James Findley and Physician's Assistant Charles Roth supported medical causation between the low back and lateral hip pain and the work injury.

[¶15] In the context of all the evidence, the ALJ found Dr. Jones's earlier report to be persuasive. *See Tardiff v. AAA N. New England, Inc.*, Me. W.C.B. No. 18-11, ¶ 13 (App. Div. 2018) (reasoning that when an ALJ is confronted with

potentially ambiguous or contradictory language in a medical expert's opinion, "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"). Although a different ALJ may have viewed medical causation differently, we find no error in the ALJ's conclusions.

D. Application of Section 201(4)

[¶16] To find Mr. Brown's injury compensable in the context of a preexisting condition, the ALJ also had to determine, consistent with section 201(4), that the employment contributed to the disability in a significant manner. Although the ALJ misstated the standard in paraphrasing the second step of the analysis when he found that "the employee's work-related injury of January 3, 2019, contributed to his disability in a significant manner," the ALJ in *Celentano* similarly misstated the applicable standard. There, the court held:

> We agree that the appropriate analysis is whether the employment, rather than the injury, contributed significantly to the employee's disability. However, the hearing officer's findings regarding the conditions of employment demonstrate that the hearing officer was aware that it was the employment, and not the injury, that had to contribute in a significant manner to the disability. The act of getting up from the table that caused the injury was part of the work activity, and the hearing officer found that this work activity was a significant factor in causing the disability. While the incident itself may have been trivial, it nevertheless constitutes employment activity. That activity caused Celentano to suffer from significant nerve root pressure and that disabled him from performing the requirements of his job.

Celentano, 2005 ME 125, ¶ 18.

[¶17] In the instant case Mr. Brown slipped on ice and fell onto his hip. The County argues that walking in winter weather is commonplace in Maine and was not work activity that enhanced Mr. Brown's risk of injury or contributed to the disability in a significant manner. This argument appears to conflate the standard for legal causation in determining whether a compensable injury occurred (in the context of a preexisting condition) and the requirement contained in the second part of the analysis under section 201(4): that the employee establish the employment contributed to the disability in a significant manner.

[¶18] In any event, the County overlooks that the employment activity involved Mr. Brown's holstering his weapon on his right hip, the hip onto which he fell. According to the ALJ, Mr. Brown reported that during the fall, "his gun was pushed into his right hip." The ALJ neither misconceived nor misapplied the law in determining that this work activity enhanced his risk of injury and contributed to his disability in a significant manner.

[¶19] In addition, the ALJ compared Mr. Brown's physical status and abilities before and after the work injury in determining the significance of the employment contribution. He noted that before Mr. Brown fell on January 3, 2019, he was not at all disabled. He was working full-time without restrictions and was very physically active at work and outside work. After the injury, he was unable to perform his duties as a deputy. That finding is supported by the record. We find no error.

III. CONCLUSION

[¶20] Because the ALJ neither misconceived nor misapplied the law, and the ALJ's findings are supported by competent evidence, we affirm the 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.

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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