ABEL LANG
(Appellee)

v.

ENERGY NORTH, INC.
(Appellant)

and

EMPLOYERS' INSURANCE OF WAUSAU
(Insurer)

Argued: April 6, 2022
Decided: October 21, 2022

PANEL MEMBERS: Administrative Law Judges Hirtle, Chabot, and Stovall
BY: Administrative Law Judge Chabot

[¶1] Abel Lang appeals from a decision of a Workers' Compensation Board administrative law judge (*Knopf, ALJ*) denying his Petition for Award of Compensation[1] on the basis that he did not meet his burden of establishing a work-related injury. Mr. Lang contends the ALJ erred by failing to issue findings of fact that are sufficient to support the conclusion that he did not meet his burden of proof, and that the ALJ erred in interpreting the medical evidence and substituting her opinion for that of Energy North's medical expert. Because we determine that the findings of fact are inadequate for appellate review, we remand the decision.

[1] A Petition for Payment of Medical and Related Services was dismissed without prejudice at the hearing.

I. BACKGROUND

[¶2] Mr. Lang began working for Energy North as a deli associate in 2017. His duties involved cooking, cleaning, ordering food, and servicing equipment. The ALJ found that on January 6, 2020, Mr. Lang was putting away an order of pizza dough when he "felt a 'tweak' in his back." Mr. Lang was seen at the Miles Hospital Emergency Room on January 14, 2020. The emergency room record does not mention a work-related injury, but instead states there was no specific trauma or injury associated with the onset of Mr. Lang's pain. The records also note a history of low back pain from previous work as a construction worker.

[¶3] Mr. Lang filed his Petition for Award and a hearing was held on March 18, 2021. As the petitioner, Mr. Lang bore the burden of proof that a work injury occurred on a more likely than not basis. *See Fernald v. Dexter Shoe Co.*, 670 A.2d 1382, 1385 (Me. 1996).

[¶4] The ALJ issued a decision on May 19, 2021, denying Mr. Lang's claims, stating, "I find that Mr. Lang has failed to persuade the board that it is more likely than not that he sustained a work-related injury on January 6, 2020." Mr. Lang filed a Motion for Further Findings of Fact and Conclusions of Law pursuant to 39-A M.R.S.A. § 318, which the ALJ denied. Mr. Lang then filed this appeal.

II. DISCUSSION

[¶5] Mr. Lang contends that the ALJ committed reversible error because the findings of fact in the decree related to the occurrence of a work injury are unclear and incomplete, and therefore inadequate for appellate review.

[¶6] Mr. Lang requested additional findings of fact and conclusions of law and submitted proposed findings. Accordingly, we do not assume that the ALJ made all the necessary findings to support the conclusion that he did not meet his burden of proof. *See Spear v. Town of Wells*, 2007 ME 54, ¶ 10, 922 A.2d 474. "Instead, we review the original findings and any additional findings made in response to a motion for findings to determine if they are sufficient, as a matter of law, to support the result and if they are supported by evidence in the record." *Maietta v. Town of Scarborough*, 2004 ME 97, ¶ 17, 854 A.2d 223. "[W]e review only the factual findings actually made and the legal standards actually applied." *Daley v. Spinnaker Indus., Inc.*, 2002 ME 134, ¶ 17, 803 A.2d 446 (quotation marks omitted).

[¶7] The ALJ prefaced many parts of the decree with the phrases [the witness] testified, [the witness] said, according to [the witness], or [the witness] recalled. The ALJ also included a recitation of the evidence presented and the parties' arguments. The Law Court has held that such references to the evidence are not "express factual findings" that may support a trial court's judgment because "[a]lthough the court described the testimony of the ... witnesses at length, it did not state what testimony

it believed or what findings it made on the basis of that testimony." *Klein v. Klein,* 2019 ME 85, ¶ 7, 208 A.3d 802. For instance, the decree summarized testimony about events on the alleged injury date as follows: "According to Mr. Lang, his supervisor, Marti Steinman, asked if he was okay and he said that he [th]ought so, that he had just tweaked his back." The decree later states, "Mr. Lang's supervisor, Marti Steinman, testified that contrary to Mr. Lang's testimony, Mr. Lang did not tell her he injured himself or tweaked his back on January 6, 2016." The ALJ did not make clear in her findings which parts of the testimony she credited, which she did not, and what inferences, if any, she made from the testimony.

[¶8] Likewise, the decree states, "Ms. Steinman recalled a conversation with Mr. Lang after his visit to the emergency room in which she asked him if his back problems were work related and he said they were not but rather an ongoing problem," and "Energy North also points to text messages that occurred around the time of the emergency room visit in which Mr. Lang mentions his back problems without referencing a work-related injury until January 22." The ALJ does not make clear what findings she made or inferences she drew from that testimony and text messages.

[¶9] In the decree, the ALJ concluded:

> While it is certainly possible that the events occurred as Mr. Lang described at hearing, I find that the testimony of Ms. Steinman and the contemporaneous medical records from the emergency room are at

> odds with Mr. Lang's testimony. Based on that evidence, therefore, I find that Mr. Lang has failed to persuade the board that it is more likely than not that he sustained a work-related injury on January 6, 2020.

[¶10] A finding that the evidence is at odds, however, is not sufficient to support a conclusion that Mr. Lang has not met his burden of proof on the issue of whether an injury occurred. Rather, the ALJ was obligated to state what competing testimony was believed and what conclusions were reached in reliance on the adopted testimony.

[¶11] In addition, the ALJ specifically found that Mr. Lang "felt a 'tweak' in his back" on January 6, 2020, when he was putting away a pizza dough delivery. This finding is potentially inconsistent with her conclusion that Mr. Lang failed to prove that an injury occurred.

[¶12] Mr. Lang filed a Motion for Findings of Fact and Conclusions of Law requesting additional findings on these issues. When requested, an ALJ is under an affirmative duty under 39-A M.R.S.A. § 318 to make additional findings to create an adequate basis for appellate review. *See Coty v. Town of Millinocket*, 444 A.2d 355, 357 (Me. 1982). Adequate findings include those that allow the reviewing body effectively to determine the basis of the board's decision. *See Chapel Road Assocs., L.L.C. v. Town of Wells*, 2001 ME 178, ¶ 10, 787 A.2d 137. The Law Court has recently reiterated:

> A mere finding of ultimate facts, a finding solely in terms of the statute, or the statement of a conclusion, without a finding of the basic or underlying facts on which the administrative agency deems such ultimate fact or conclusion to rest, is, as a general proposition, regarded as insufficient to support a determination.

Narowetz v. Bd. of Dental Practice, 2021 ME 46, ¶ 17, 259 A.3d 771 (quotation marks omitted).

[¶13] Given the ultimate conclusion, it could be inferred that the ALJ credited Energy North's witnesses' testimony over Mr. Lang's testimony, or found the evidence to be in equipoise. However, there are no findings on these points, and given the request for further findings, we cannot make assumptions. Because we are constrained to review only the facts as found, we cannot determine the basis of the ALJ's decision from the findings as they exist. We therefore remand for additional findings of fact and conclusions of law.[2]

The entry is:

> The administrative law judge's decision is vacated and remanded for additional findings of fact and conclusions of law.

[2] The second issue raised by Mr. Lang is whether the ALJ erred by interpreting medical records or rejecting certain medical evidence when concluding that Mr. Lang did not meet his burden of proof. Although the ALJ was not compelled to adopt the opinion of any medical provider, *Dionne v. LeClerc*, 2006 ME 34, ¶ 15, 896 A.2d 923, whether she credited any medical evidence as a basis for her decision should be addressed in findings on remand.

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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