

TERESA MOFFITT
(Appellee)

v.

FASTENAL COMPANY
(Appellant)

and

TRAVELERS INSURANCE CO.
(Insurer)

Argued: February 5, 2025
Decided : March 6, 2025

PANEL MEMBERS: Administrative Law Judges Sands, Stovall, and Murphy
BY: Administrative Law Judge Murphy

[¶1] Fastenal Company appeals from a decision of a Workers' Compensation Board administrative law judge (*Hirtle, ALJ*), granting Teresa Moffitt's Petitions for Award in part and granting her Petition for Payment of Medical and Related Services, both related to an August 30, 2020, work injury. Fastenal contends that the ALJ erred in determining that (1) Ms. Moffitt's complaints were causally related to her employment and (2) Ms. Moffitt was entitled to total incapacity benefits from August 10, 2022, to the present and continuing.¹ We affirm the decision.

¹ The ALJ also awarded a closed-end period of total incapacity benefits from March 25, 2021, to May 26, 2021, when Ms. Moffitt was recovering from surgery. Other than challenging causation overall, Fastenal did not specifically challenge the award of total benefits for that period. Fastenal identified the issue in its brief as "Whether the administrative law judge erred in awarding the employee with ongoing total incapacity [benefits] despite having work capacity."

I. BACKGROUND

[¶2] Fastenal sells industrial parts, personal protective equipment, chemicals and tools. Ms. Moffitt began working for Fastenal in March of 2018. Fastenal had an office on site at the Woodland Pulp and Paper Mill in Baileyville. Ms. Moffitt had worked out of her truck for approximately one year and was then assigned to the Baileyville office, supplying parts and equipment to mill workers and contractors. She had previously held many different jobs, including farming on her property.

[¶3] While at work on August 30, 2020, Ms. Moffitt stumbled in a dark storage room (referred to as a “Conex”) while looking for parts. She reached out with her left arm, catching herself from falling. She first felt a shock, then pain in her left arm and an electric feeling in her hand.

[¶4] On September 30, 2020, Ms. Moffitt saw her primary care provider, Phylcia Bonavida, NP-C, who recorded that Ms. Moffitt, “was in a Conex at work, stepped on an empty box, fell forward and caught herself with the left arm one month ago.” Ms. Bonavida prescribed an oral steroid and a muscle relaxer and advised Ms. Moffitt not to use her left arm for heavy lifting for a week.

[¶5] Ms. Moffitt was still in pain but continued to work for Fastenal out of a sense of obligation until the mill went through its annual shut down for maintenance, which increased her workload. Moffitt told her supervisor that she was having difficulty doing the job but would continue to work through the shutdown.

Her last day was November 18, 2020, after which she went on a pre-planned vacation. When Ms. Moffitt came back from vacation, she received a termination letter from Fastenal. She has not returned to work. She was able to do some farming work for a time.

[¶6] Ms. Moffitt continued to see her primary care provider and was referred to an orthopedist, who in turn referred her to a vascular specialist, Dr. Larry Flanagan. Dr. Flanagan diagnosed Ms. Moffitt with thoracic outlet syndrome and performed surgery on March 25, 2021. Ms. Moffitt experienced some relief after the surgery, but the pain returned. Ms. Moffitt last saw Dr. Flanagan again on October 25, 2021. Dr. Flanagan recorded that Ms. Moffitt was left with some residual neuropathy and noted that if symptoms persist, it would be appropriate to refer her to pain management. Ms. Moffitt continued to report left arm and shoulder complaints to her primary care provider, Ms. Bonavida.

[¶7] Ms. Bonavida responded to written questions posed by Ms. Moffitt's attorney, dated March 11, 2022. When asked to list Ms. Moffitt's diagnoses and to identify which, if any, were related to her work, Ms. Bonavida wrote, "Thoracic outlet syndrome of left thoracic outlet, left shoulder pain." When asked if Ms. Moffitt suffered from any preexisting conditions, Ms. Bonavida indicated that Ms. Moffitt had no preexisting conditions, "prior to [the] incident at work that would be related." Ms. Bonavida also wrote that Ms. Moffitt continued to treat "following her surgery

for current condition, treatment for chronic nerve pain of left arm, shoulder, and chest.” She listed Ms. Moffitt’s work restrictions as “no heavy lifting over 10 pounds with left arm/shoulder.”

[¶8] Thereafter, Ms. Moffitt began treating with Dr. Robert Thompson, a vascular surgeon. Dr. Thompson recommended a second surgery for her diagnosed thoracic outlet syndrome. On August 10, 2022, Dr. Thompson wrote that Ms. Moffitt, “is currently unable to work in her usual job even with the limitations and restrictions as a result of this condition.” As of the date of the hearing, Ms. Moffitt has not undergone the second surgery.

[¶9] Dr. John Herzog performed a medical records review at Fastenal’s request and issued a report on April 17, 2023. Dr. Herzog wrote that Ms. Moffitt’s diagnosis was pain “of unknown origin” in her left upper extremity. He did not believe her condition was work-related because the “injury did occur slowly over time.” Dr. Herzog noted that Ms. Moffitt’s condition appeared worse after surgery, and he opined that Ms. Moffitt should not lift more than five pounds and she should avoid overhead activities with her left arm.

[¶10] On April 30, 2024, after two hearings and the close of the evidence, the ALJ issued a decision finding that Ms. Moffitt suffered an acute injury to her left upper extremity on August 30, 2020, when she almost fell at work but caught herself using her left arm. Relying upon the opinion of Dr. Thompson, the ALJ found that

Ms. Moffitt's diagnosis was thoracic outlet syndrome. Dr. Thompson, however, did not address whether the onset of thoracic outlet syndrome was related to Ms. Moffitt's work. The ALJ found causation based on Ms. Bonavida's opinion and Ms. Moffitt's testimony. The ALJ was not persuaded by Dr. Herzog's opinion that Ms. Moffitt's symptoms were not work-related because he addressed causation from the perspective that she had sustained a gradual, rather than acute, injury.

[¶11] The ALJ further found that for the periods between November 18, 2020, and March 25, 2021, and from May 26, 2021, until August 9, 2022, Ms. Moffitt was not entitled to benefits because she had a work capacity and was likely able to earn more than her pre-injury wage. From March 26, 2021, through May 25, 2021, however, when Ms. Moffitt was recovering from surgery, the ALJ awarded total incapacity benefits. The ALJ also awarded total incapacity benefits from August 10, 2022, to the present and continuing based on: Ms. Moffitt's credible testimony that her left upper extremity symptoms grew worse after the surgery; Dr. Thompson's medical note from August 10, 2022, indicating that Ms. Moffitt was unable to perform her usual job, even with limitations and restrictions; Dr. Herzog's opinion that Ms. Moffitt's functioning had worsened since the surgery; and Dr. Herzog's very limiting restrictions allowing her to lift only five pounds.

[¶12] The ALJ also ordered Fastenal to pay reasonable and proper related medical costs, including for the recommended surgery with Dr. Thompson.²

[¶13] Fastenal filed a Motion for further Finding of Fact and Conclusions of Law. On June 26, 2024, the ALJ issued additional findings but did not change the result of the decision. This appeal followed.

II. DISCUSSION

A. Standard of Review

[¶14] 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). The Appellate Division will not disturb a factual finding made by the ALJ absent a showing that it lacks competent evidence to support it. *Dunkin Donuts of Am., Inc. v. Watson*, 366 A.2d 1121, 1125 (Me. 1976).

B. Causation

[¶15] Fastenal contends that the ALJ’s finding that Ms. Moffitt’s complaints are causally related to her employment is unsupported by competent medical

² The ALJ also ruled on issues regarding a refusal of work and a notice defense, but those issues were not appealed we do not discuss them further.

evidence. Fastenal specifically contends that by inferring a causal connection from Ms. Bonavida's "vague" answers to questions posed by Ms. Moffitt's attorney, the ALJ has engaged in improper speculation, surmise, and conjecture. In Fastenal's view, the ALJ was compelled to adopt Dr. Herzog's opinion that the injury was not work-related. We disagree with these contentions.

[¶16] The ALJ based his finding that Ms. Moffitt's condition is work-related on her treating provider's response to the following written questions. The attorney asked:

What are Ms. Moffitt's current diagnoses with regards to her upper extremities, neck, shoulders? Which, if any, of these diagnoses are causally related to her work activities for the Employer?

Ms. Bonavida replied:

Thoracic outlet syndrome of left thoracic outlet, left shoulder pain.

[¶17] The ALJ construed Ms. Bonavida's answer as stating that Ms. Moffitt's thoracic outlet syndrome and left shoulder pain are work related. Although the answer given can be read as ambiguous,³ that does not necessarily render her medical opinion incompetent. When a medical opinion is ambiguous, the ALJ may "consider the larger context in which those statements are offered to construe the intent of the examining physician." *Smith v. Me. Coast Sea Vegetables, Inc.*, Me. W.C.B. No.

³ A medical provider's opinion may be ambiguous if it is susceptible to more than one meaning. *Thurlow v. Rite Aid of Me., Inc.*, Me. W.C.B. No. 16-23, ¶ 14 (App. Div. 2016). Ms. Bonavida's written answer is susceptible to multiple meanings: she may have answered (1) only the first of the two questions presented, (2) only the second, or (3) both questions.

20-1, ¶ 11 (App. Div. 2020) (quotation marks omitted); *see also Tardiff v. AAA N. New England, Inc.*, Me. W.C.B. No. 18-11, ¶ 13 (App. Div. 2018).

[¶18] Looking at the larger context in which the opinion was provided, there is competent evidence in the record that supports the ALJ’s interpretation of Ms. Bonavida’s causation opinion. First, in Ms. Bonavida’s medical note of September 30, 2020, she wrote that, “[Ms. Moffitt] was in a Conex at work, stepped on an empty box, fell forward and caught herself with the left arm one month ago.” That demonstrates that Ms. Bonavida was aware of the acute nature and the mechanism of injury, consistent with that determined by the ALJ. This is consistent with Ms. Moffitt’s testimony, which the ALJ expressly found credible, that the injury resulted from the acute incident at work.

[¶19] In addition, Ms. Bonavida indicated that there were no preexisting conditions “prior to incident at work that would be related.” This further supports the finding that the employment caused Ms. Moffitt’s condition, rather than something else.

[¶20] Because the larger context supports the ALJ’s interpretation of Ms. Bonavida’s medical findings—that Ms. Moffitt’s thoracic outlet syndrome and subsequent ongoing left shoulder pain were work related—we will not disturb that finding on appeal.

[¶21] Moreover, the ALJ was not compelled to accept Dr. Herzog’s medical findings. The choice between competing expert medical opinions is a matter soundly within the purview of the ALJ who hears the case. *Davis v. Mayo Reg’l Hosp., Me.* W.C.B. No. 24-16, ¶ 2 (App. Div. 2024). Dr. Herzog’s opinion that Ms. Moffitt’s condition was not work related was grounded in his view that her condition had developed gradually, over time. Based on competent evidence in the record, the ALJ found the injury to have occurred acutely. It was neither arbitrary nor irrational to reject an opinion regarding a gradual injury on the basis that it was irrelevant.

C. Ongoing Total Incapacity Benefits

[¶22] Fastenal next argues that the ALJ erred when awarding ongoing total incapacity benefits because no medical provider had indicated that Ms. Moffitt had no work capacity. Fastenal asserts that Ms. Moffitt’s testimony that she was able to continue with some farming work after the injury compels a finding that she had a work capacity.

[¶23] An employee’s earning capacity “is based on (1) the employee’s physical capacity to earn wages and (2) the availability of work within the employee’s physical limitations.” *Dumond v. Aroostook Van Lines*, 670 A.2d 939, 941 (Me. 1996). Fastenal cites *Craven v. Department of Inland Fisheries and Wildlife*, W.C.B. 11034775 (Me. 2021) as persuasive authority for its position. In *Craven*, the employee was injured while working as a game warden, and the

employer voluntarily paid him benefits. *Id.* at ¶ 1. Thereafter, he continued to work on his family farm where he kept sheep and other farm animals such as cattle, hogs, and chickens. *Id.* at ¶ 5. He also worked a second job, as a caretaker for a wilderness camping area. *Id.* at ¶ 6. His restrictions included lifting up to ten pounds frequently, twenty pounds occasionally, and 50 pounds rarely, and pushing and pulling up to 50 pounds occasionally, with no restrictions on the hours he could work. *Id.* at ¶ 4. The ALJ imputed a forty hour minimum wage-earning capacity, and because that amount exceeded the benefit being paid, allowed the employer to discontinue payments. *Id.* at ¶ 6.

[¶24] This case is distinguishable. Ms. Moffitt’s restrictions are more limiting than the employee’s in *Craven*. Moreover, there is no evidence that Ms. Moffitt was able to earn any profit from farming, or that she has a second job. Ms. Moffitt testified that she can only plant seedlings and sell eggs, and only with the support of an organization that provides occupational therapy.

[¶25] The Law Court has held that “trivial occasional employment under rare conditions at small remuneration” and extremely limited work capacity are sufficient to support an award of total incapacity benefits. *Hamel v. Pizzagalli Corp.*, 386 A.2d 741, 743 n.2 (Me. 1978); *see also Levesque v. Shorey*, 286 A.2d 606, 610-11 (Me. 1972). Total incapacity under the Act does not always require a showing of complete

inability to perform tasks. *Bartlett v. Nestle Waters N. America, Inc.*, Me. W.C.B. Dec. No. 21-14, ¶ 19 (App. Div. 2021).

[¶26] Ms. Moffitt was awarded ongoing total incapacity benefits based on a number of factors, including her credible testimony that her left upper extremity symptoms grew worse after her first surgery. An employee's testimony alone may be sufficient for an award of benefits. *See e.g., Hughes v. First Fleet, Inc.*, Me. W.C.B. Dec. No. 24-14, ¶ 15 (App. Div. 2024); *Berube v. New England Truck Tire Ctrs., Inc.*, Me. W.C.B. Dec. No. 23-19, ¶ 23 (App. Div. 2023) (both citing to *Michaud's Case*, 122 Me. 276, 279, 119 A. 627 (1923)). However, the ALJ did not rely on Ms. Moffitt's testimony alone. Fastenal's medical expert, Dr. Herzog, opined that Ms. Moffitt's functioning worsened after her first surgery and that she was restricted from lifting more than five pounds. Dr. Thompson stated that Ms. Moffitt was unable to perform her prior work, even with limitations and restrictions. Furthermore, as of the time of the hearing, Ms. Moffitt was waiting to undergo a second surgery. Accordingly, the record before the ALJ contains competent evidence to support a finding of ongoing total incapacity.

III. CONCLUSION

[¶27] The ALJ's decision finding a causal relationship between Ms. Moffitt's symptoms and limitations and her employment is based on competent medical evidence. To the extent that the medical opinion was ambiguous, the ALJ properly

resolved the ambiguity by considering the larger context in which the medical opinion was offered. Additionally, the ALJ did not err when determining that Ms. Moffitt was entitled to ongoing total incapacity benefits, for the reasons detailed above.

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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