

MELISSA TRIANO GEE
(Appellant)

v.

STARLIGHT LODGE ROCKPORT, LLC
(Appellee)

and

EASTERN ALLIANCE INSURANCE GROUP
(Insurer)

Argued: June 11, 2026
Decided: July 22, 2026

Panel Members: Administrative Law Judges Chabot, Stovall, and Smith
By: Administrative Law Judges Chabot

[¶1] Melissa Triano Gee appeals a decision of a Workers' Compensation Board administrative law judge (*Rooks, ALJ*), denying her Petition for Award and Petition for Payment of Medical and Related Services related to an alleged August 5, 2020, neck injury. Ms. Gee contends that the ALJ erred in determining that she did not meet her burden of proving a compensable, work-related injury; and in failing to apply the legal standard for compensation in cases involving a preexisting condition, *see* 39-A M.R.S.A § 201(4). We disagree with her contentions and affirm the decision.

I. BACKGROUND

[¶2] Ms. Gee was hired by Starlight Lodge as an innkeeper. She testified that on August 5, 2020, while she was carrying laundry, she fell three feet off a wooden platform that connected the laundry building with a shed. She initially sought medical treatment on August 13, 2020, at Pen Bay Hospital Emergency Department. She did not mention the fall at that time but reported multiple symptoms she had been experiencing in the few months prior to the visit, including left arm and left leg numbness. She had preexisting degenerative arthritis in her cervical spine. She was ultimately diagnosed with cervical radiculopathy and underwent surgery with Dr. Rajiv Desai on August 20, 2020. The surgery resulted in much improvement, and Ms. Gee moved to Montana in October 2020. She began new employment there in early 2021.

[¶3] On January 16, 2024, Dr. Desai wrote a causation opinion at the request of Ms. Gee's advocate. Dr. Desai was not aware of a workplace fall until the advocate requested the medical opinion by letter dated November 14, 2023. In the letter, the advocate stated that Ms. Gee had fallen from a platform several feet above the ground. Pictures of the platform admitted at the hearing show it to be approximately one foot off the ground. Dr. Desai opined that it was more likely than not that Ms. Gee's condition was caused by the workplace fall; that the fall had aggravated and combined with her preexisting arthritis, causing disability; and that

her work activities contributed to the disability and need for surgery in a significant manner. *See* 39-A M.R.S.A § 201(4).

[¶4] The ALJ found there were inconsistencies between the information that was reported to medical providers and the witnesses' testimony. She rejected Dr. Desai's opinion, stating, "Because Dr. Desai was given inaccurate information regarding the details of the alleged fall, I find his causation opinion to be unreliable." The ALJ also noted the lack of a contemporaneous report of a fall in the medical records. Thus, the ALJ found that Ms. Gee did not meet her burden of proof, and denied the petitions.

[¶5] Ms. Gee did not file a motion for further findings of facts and conclusion of law pursuant to 39-A M.R.S. § 318. She has now filed this appeal.

II. DISCUSSION

A. Standard of Review

[¶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). The Appellate Division will not disturb factual findings made by the ALJ absent a showing that there is a lack of competent evidence to support those findings. *Dunkin Donuts of*

Am., Inc. v. Watson, 366 A.2d 1121, 1125 (Me. 1976). In cases in which an ALJ concludes that the party with the burden of proof failed to meet that burden, the Appellate Division will reverse that determination only if the record compels a contrary conclusion. *Dunlop v. Town of Westport Island*, 2012 ME 22, ¶ 13, 37 A.3d 300. When a party fails to request further findings, we will treat the ALJ as having made whatever factual determination could, in accordance with correct legal concepts, support the ultimate decision, and we inquire whether on the evidence such factual determinations must be held clearly erroneous. *Daley v. Spinnaker Indus., Inc.*, 2002 ME 134, ¶ 17, 803 A.2d 446 (citing *Gallant v. Boise Cascade Paper Gr.*, 427 A.2d 976, 977 (Me.1981)).

B. Burden of Proof

[¶7] Ms. Gee argues that the ALJ erred when rejecting Dr. Desai's medical opinion and thereby finding that she did not meet her burden of proof. In particular, she contends the ALJ erred when discrediting that opinion in part on the basis that there was no early reference to a workplace fall in the medical records. We find no error.

[¶8] As a general matter, the petitioning party bears the burden of proof to establish all elements of a claim on a more probable than not basis. *Fernald v. Dexter Shoe Co.*, 670 A.2d 1382, 1385 (Me. 1996). Medical causation can be shown when it is established that the work activity or incident in fact produces the onset of

symptoms. *McKinney v. The Hertz Corp.*, Me. W.C.B. No. 23-16, ¶ 12 (App. Div. 2023). “Except in cases where ‘causation is clear and obvious to a reasonable [person] who had no medical training[,]’ an employee must rely on the opinion of a qualified medical expert to meet his or her burden of proof on the issue of medical causation.” *Smith v. Me. Coast Healthcare Corp.*, Me. W.C.B. No. 20-2, ¶ 10 (App. Div. 2020) (quoting *Brawn v. Bangor Tire Co.*, Me. W.C.C. 97, 101 (Me. App. Div. 1983)). When an employee has a preexisting condition, as in this case, the medical issues in the case are considered complicated, and an expert causation opinion is required. *Id.* (citing *Bryant v. Masters Machine Co.*, 444 A.2d 329 (Me. 1982)).

[¶9] The ALJ found Dr. Desai’s opinion unpersuasive because the doctor was not aware that Ms. Gee had fallen at work until more than three years after the treatment had occurred; contemporaneous medical records did not include reference to a fall; and because the doctor based his opinion on a misunderstanding regarding the height of Ms. Gee’s fall.

[¶10] It is the province of an ALJ, as fact-finder, to accept or reject expert medical opinions, in whole or in part. *Leo v. Am. Hoist & Derrick Co.*, 438 A.2d 917, 920-21 (Me. 1981); *Rowe v. Bath Iron Works*, 428 A.2d 71, 74 (Me. 1981). Despite Ms. Gee’s contention that the evidence establishes that it was reasonable for her to report the fall after her injury had progressed, the ALJ, as the factfinder and sole judge of the credibility of witnesses, was within her authority to choose between

conflicting versions of the facts. *Gilbert v. S.D. Warren*, Me. W.C.B. No. 16-12, ¶ 11 (App. Div. 2016).

[¶11] The ALJ provided a reasonable basis for rejecting Dr. Desai's medical opinion. Because the remaining evidentiary record lacked an expert opinion on medical causation, we conclude that the evidence does not compel a conclusion in Ms. Gee's favor, and we affirm the decision.

C. Preexisting Condition

[¶12] Ms. Gee next contends the ALJ erred by failing to apply the legal standard applicable to cases involving a preexisting condition, found in 39-A M.R.S.A. § 201(4). Again, we disagree.

[¶13] In cases involving a preexisting condition, 39-A M.R.S.A. § 201(4) applies. The statute reads as follows:

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.

[¶14] The case law following the enactment of section 201(4) makes clear that under that provision, the ALJ must engage in a two-part analysis. *Derrig v. Fels*, 1999 ME 162, ¶ 6, 747 A.2d 580; *Celentano v. Dep't. of Corr.*, 2005 ME 125, ¶ 9, 887 A.2d 512. The first step is to determine whether there has been a work-related injury. *Id.* If satisfied an injury has occurred, the ALJ must then determine whether the employment contributed to the disability in a significant manner. *Id.* In this case,

the ALJ determined that Ms. Gee did not meet her burden of proving a work-related injury, thus there was no reason to proceed to the second stage of the analysis.

D. Ineffective Assistance of Counsel

[¶15] Ms. Gee appears to allege ineffective assistance of counsel because her advocate did not call certain witnesses to testify and did not file a motion for additional findings of fact and conclusions of law. However, ineffective assistance of counsel does not constitute a basis for reversal in civil matters, except in certain circumstances when the claimant's liberty is at risk. *Breunig v. First Protection Servs., Inc.*, Me. W.C.B. No. 20-28, ¶ 17 (App. Div. 2020) (citing *Nelson v. Boeing Co.*, 446 F.3d 1118, 1121 (10th Cir. 2006) (holding the statutory right to assistance of counsel under Title VII does not create a corresponding right to effective assistance of counsel)). In addition, the Appellate Division's authority is limited by statute to the review of decisions made by an ALJ. *See* 39-A M.R.S.A. §§ 321(A)(2), 318. The issue of the effectiveness of advocacy is beyond the scope of the Appellate Division's mandate.

III. CONCLUSION

[¶16] We conclude that the ALJ did not err in finding that Ms. Gee failed to meet her burden of establishing a compensable, work-related injury.

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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