GREGORY GALLANT
(Appellant)

v.

WEBBER OIL COMPANY
(Appellee)

and

MAINE EMPLOYERS MUTUAL INSURANCE COMPANY
(Insurer)

Conferenced: May 22, 2014
Decided: April 7, 2015

PANEL MEMBERS: Hearing Officers Pelletier, Elwin, and Knopf
BY: Hearing Officer Pelletier

[¶1] Gregory Gallant appeals from a decision of a Workers' Compensation Board hearing officer (*Greene, HO*) denying his Petition for Award related to a skin condition that he claimed was caused by exposure to heating oil in the course of his employment with Webber Oil Company. In so doing, the hearing officer rejected the medical findings of the independent medical examiner appointed pursuant to 39-A M.R.S.A. § 312(7) (Supp. 2014)[1]. We affirm the hearing officer's decision.

[1] Title 39-A M.R.S.A. §312(7) provides:

> The board shall adopt the medical findings of the independent medical examiner unless there is clear and convincing evidence to the contrary in the record that does not support the medical findings. Contrary evidence does not include medical evidence not considered by the independent medical examiner. The board shall state in writing the reasons for not accepting the medical findings of the independent medical examiner.

I. BACKGROUND

[¶2] Gregory Gallant started working as an oil burner service technician for Webber Oil in 2000. Mr. Gallant first began to notice a change in the skin on both forearms in April 2010, including a rash and blisters that were painful and itchy. He sought treatment from various providers, including Dr. Shapero, an allergy and immunology specialist, who in September 2011 diagnosed the skin condition as "contact irritant and/or allergic dermatitis aggravated by workplace exposures," and restricted Mr. Gallant from working with oil. The following month, he saw Dr. Sykes, a dermatologist, who concluded that Mr. Gallant's skin disorder was a different condition, prurigo nodularis, and that it was not attributable to oil fumes or to direct contact with oil. Dr. Castorina also examined Mr. Gallant in 2011, and diagnosed him with nonwork-related, idiopathic prurigo nodularis. Dr. Mainen performed a records review for the employer pursuant to 39-A M.R.S.A. § 207 (Supp. 2014), and concluded that the condition was not work-related.

[¶3] Mr. Gallant filed a Petition for Award. On December 3, 2012, he was evaluated by Dr. Rovner, a board-appointed independent medical examiner (IME), pursuant to 39-A M.R.S.A. § 312. The hearing officer was required to "adopt the medical findings of the independent medical examiner unless there is clear and convincing evidence to the contrary in the record that does not support the medical

findings." *Id.* § 312(7). Dr. Rovner specifically noted that "after 10 years with no problems [Mr. Gallant] began experiencing difficulty in the winter of 2010 [when] apparently there had been a change in the fuel oil used to a low sulfur and bio-fuel formulation." Dr. Rovner opined that Mr. Gallant's skin problem was caused by contact with oil at work "due to the temporal waxing and waning corresponding to working and vacation [and] the fact that there had been a change in the oil itself coinciding with the onset of his symptoms."

[¶4] The hearing officer rejected the IME's opinion that the skin condition was work-related. Accordingly, the hearing officer denied Mr. Gallant's Petition for Award, as well as his subsequent Motion for Further Findings of Fact and Conclusions of Law. Mr. Gallant now appeals.

II. DISCUSSION

[¶5] Mr. Gallant contends that there is insufficient evidence in the record to contradict the IME opinion that his condition is work-related. When determining whether there is clear and convincing evidence sufficient to contradict the IME's medical findings, the Appellate Division panel looks to whether the hearing officer "could reasonably have been persuaded that the required factual finding was or was not proved to be highly probable." *Dubois v. Madison Paper Co.*, 2002 ME 1, ¶ 14, 795 A.2d 696 (quotation marks omitted). Giving due deference to the hearing officer's findings with regard to credibility and factual medical issues, the

panel must determine whether "the hearing officer could have been reasonably persuaded by the contrary medical evidence that it was highly probable that the record did not support the IME's findings." *Id.*; see *also Bean v. Charles A. Dean Mem'l Hosp.*, Me. W.C.B. No. 13-6, ¶ 14 (App. Div. 2013).

[¶6] When an IME's opinion is rejected, the hearing officer must explain the reasons for that rejection in writing. 39-A M.R.S.A. § 312(7). The hearing officer explained that he credited the testimony of a witness presented by Webber Oil that there had, in fact, been no change in the composition of the heating oil, contrary to Mr. Gallant's testimony that there had been a change coinciding with the onset of his symptoms. Also, the hearing officer did not credit Mr. Gallant's testimony that his skin condition improved only when he was away from work. Instead, the hearing officer cited contemporaneous medical records suggesting that with antibiotic and topical treatment and avoidance of scratching, the condition improved even while Mr. Gallant continued to work.

[¶7] As the fact finder, the hearing officer is the ultimate judge of the credibility of a claimant's factual assertions. *See, e.g., Dubois*, 2002 ME 1, ¶ 16, 795 A.2d 696; *Saltz v. M.W. Sewall & Co.*, Me. W.C.B. No. 14-34, ¶ 15 (App. Div. 2014). The IME based his opinion on factual assertions by Mr. Gallant that the hearing officer determined were unfounded. The hearing officer instead credited contrary medical opinions from Drs. Sykes, Castorina, and Mainen that his prurigo

nodularis skin condition is causally unrelated to a chemical exposure in the workplace. The reasons given by the hearing officer demonstrate that he could have been reasonably persuaded by the contrary medical evidence that it was highly probable that the record did not support the IME's findings. *See Dubois*, ¶ 14; *Bean*, No. 13-6, ¶ 20.

III. CONCLUSION

[¶8] The hearing officer did not err in finding clear and convincing evidence contrary to the IME's findings.

The entry is:

The hearing officer'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 (Supp. 2014).

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