ROBERT DILLINGHAM
(Appellee)

v.

GREAT NORTHERN PAPER
(Appellant)

and

SEDGWICK CLAIMS MANAGEMENT SERVICES
(Insurer)

Argued: November 19, 2014
Decided: March 13, 2015

PANEL MEMBERS: Hearing Officers: Greene, Collier, and Elwin
BY: Hearing Officer Greene

[¶1] Great Northern Paper appeals from a decision of a Workers' Compensation Board hearing officer (*Goodnough, HO*) granting Robert Dillingham's Petitions for Restoration and to Determine Extent of Permanent Impairment. The hearing officer based his decision on the medical findings of Dr. Graf, who was appointed as independent medical examiner (IME) pursuant to 39-A M.R.S.A. § 312 (Supp. 2014). The hearing officer was required to adopt Dr. Graf's medical findings absent clear and convincing contrary evidence in the record. *Id.* § 312(7).

[¶2] Dr. Graf opined that Mr. Dillingham's current right rotator cuff pathology resulted from the 1999 work injury, and that Mr. Dillingham suffers 14% whole person permanent impairment, including 5% attributable to the rotator

cuff condition. The hearing officer adopted these findings and consequently granted the petitions, awarding Mr. Dillingham ongoing partial incapacity benefits. *See* 39-A M.R.S.A. § 213(1) (Supp. 2014).

[¶3] On appeal, Great Northern Paper contends that the hearing officer was required to disregard the IME's medical findings based on clear and convincing evidence in the record. When considering whether clear and convincing medical evidence contrary to the IME's findings permitted a rejection of those findings by the hearing officer, "we determine whether the hearing officer could reasonably have been persuaded by the contrary medical evidence that it was highly probable that the record did not support the IME's medical findings." *Dubois v. Madison Paper Co*., 2002 ME 1, ¶ 14, 795 A.2d 696 (quotation marks omitted). However, where, as here, the hearing officer adopts the IME's findings, we will reverse only if those findings are not supported by any competent evidence, or the record discloses no reasonable basis to support the decision. *See Pomerleau v. United Parcel Serv*., 464 A.2d 206, 209 (Me. 1983).

[¶4] Great Northern Paper did not present specific expert medical evidence to controvert Dr. Graf's opinion. Instead, it contends that Dr. Graf's finding that the present rotator cuff condition was related to the original 1999 work injury is not supported in the medical records. Specifically, Great Northern Paper asserts that the medical records indicate that in May 1999, Mr. Dillingham suffered an

injury to the trapezius/scapular area and the long thoracic nerve enervating the right scapular region, but not the rotator cuff.

[¶5] The hearing officer, however, found that the medical records were "replete with references to a very problematic and painful 'right shoulder,' which is obviously part and parcel of the right upper quarter." He also noted that there did "not seem to be any disagreement that Mr. Dillingham likely did not present with such overt symptomatology" of rotator cuff problems noted by medical providers or evaluators prior to Dr. Graf's September 13, 2013, evaluation. However, the hearing officer also pointed out that in his deposition testimony Dr. Graf had stated as follows:

> [I]ncluded in those [right shoulder, arm, upper extremity] issues, either as a problem originating directly from the injury itself 5/27/1999 at the glenohumeral and rotator cuff or -- *or as part of and the consequence of changes over time that can reasonably be related to the nerve*, which I think is primarily -- I think that's the primary problem, was a neurological traction injury to multiple peripheral nerves.

(Emphasis in original.)

[¶6] The hearing officer stated that it was ". . . far from obvious that the employee's injury did not eventually cause rotator cuff range of motion issues, if even only to a small degree . . ." and that, "Dr. Graf's medical opinion . . . that the nerve injury affected the rotator cuff gradually over time, resulting in measurable

range of motion deficits at the time of his examination, cannot be viewed as unreasonable, arbitrary, illogical, or frankly inconsistent with the medical file."

[¶7] Because the hearing officer was required to adopt Dr. Graf's medical findings initially, and rationally could have been unpersuaded by other evidence that it was highly probable that Dr. Graf was wrong, particularly in the absence of a contrary medical opinion, we affirm the hearing officer's decision that the whole person permanent impairment for "rotator cuff pathology"[1] was includable for purposes of 39-A M.R.S.A. § 213(1), so as to permit a continuation of partial incapacity benefits beyond 520 weeks.

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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[1] The hearing officer mistakenly stated that this level of whole person impairment was 8% (the upper extremity impairment level), rather than 5%, but then correctly found that the total impairment resulting from the 1999 injury, after adding the undisputed 9% for the thoracic nerve injury, was 14%.

Attorney for Appellant:
Peter M. Weatherbee, Esq.
WEATHERBEE LAW OFFICE, PA
PO Box 1127
Bangor, ME 04402-1127

Attorneys for Appellee:
James J. MacAdam, Esq.
Nathan A. Jury, Esq.
David E. Hirtle, Esq.
MacADAM JURY, P.A.
208 Fore Street
Portland, ME 04101