

KARL R. GOETSCH
(Appellant)

v.

SMITH & WESSON CORPORATION
(Appellee)

and

BROADSPIRE
(Insurer)

Conference held: February 6, 2019
Decided: February 8, 2019

PANEL MEMBERS: Administrative Law Judges Collier, Elwin, and Knopf
BY: Administrative Law Judge Collier

[¶1] Karl R. Goetsch appeals from a May 31, 2018, decision of a Workers' Compensation Board administrative law judge (*Pelletier, ALJ*). The ALJ (1) awarded Mr. Goetsch the Protection of the Act for a neck injury incurred due to a slip and fall at work on January 18, 2015, but (2) denied Mr. Goetsch's Petitions for Payment of Medical and Related Services and for Award related to a 2016 carpal tunnel condition.

[¶2] Mr. Goetsch has a significant preexisting condition in his cervical spine that involved three previous surgeries, including a fusion. When he slipped and fell at work on January 18, 2015, he experienced a temporary worsening of his preexisting neck condition. He received medical treatment but missed no time from

work. Although he was restricted from heavy lifting for a time, he was able to resume full duties as a machine operator after a few months. Based on the medical evidence, the ALJ found that Mr. Goetsch sustained a temporary aggravation of the preexisting neck problem due to the 2015 slip and fall at work, which resolved after a few months. The ALJ further found that Mr. Goetsch's ongoing neck problems are caused by the preexisting neck condition, not by the slip and fall.

[¶3] Mr. Goetsch underwent bilateral carpal tunnel release surgery in 2016. Smith & Wesson paid the medical bills and for lost time related to that surgery, voluntarily and without prejudice. Mr. Goetsch testified at his hearing that he did not sustain a separate work-related injury in 2016. Instead, he asserted that he suffered only one injury, and that the carpal tunnel condition stemmed from the neck problems that arose from the 2015 slip and fall.

[¶4] Mr. Goetsch contends that the ALJ erred by failing to consider that he continues to suffer right carpal tunnel problems and incur medical bills due to that injury. However, the ALJ expressly found as fact that the carpal tunnel injury is not related to the neck condition. Further, he found no evidence to establish that the carpal tunnel condition is work related. These findings have support in the record, and are therefore sustainable on appeal. *See Pomerleau v. United Parcel Serv.*, 464 A.2d 206, 209 (Me. 1983). Accordingly, Mr. Goetsch is not entitled to medical or lost time benefits for the carpal tunnel condition.

[¶5] Mr. Goetsch further asserts that ALJ failed to consider that Smith & Wesson did not timely process his workers' compensation claim, which has caused problems with regard to his medical insurance coverage for the injuries. This issue, however, was not presented to the ALJ at the hearing. Because Mr. Goetsch raises this argument for the first time on appeal, it has not been preserved for appellate review, and is waived. *Severy v. S.D. Warren Co.*, 402 A.2d 53, 56 (Me. 1979) (“Whether in the criminal or civil sphere, we have long adhered to the practice of declining to entertain arguments not presented to the original tribunal.”); *Henderson v. Town of Winslow*, Me. W.C.B. No. 17-46, ¶ 10 (App. Div. 2017) (explaining the importance of raising a legal argument at a time and manner sufficient to give the ALJ and opposing party a fair opportunity to respond and address it).

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 (Supp. 2018).

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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