RAYMOND CORSON
(Appellee/Cross Appellant)

v.

JOHN LUCAS TREE EXPERTS
(Appellant/Cross Appellee)

and

CANNON COCHRAN MANAGEMENT SERVICES, INC.
(Insurer/Cross Appellee)

Conference held: September 29, 2021
Decided: August 24, 2022

PANEL MEMBERS: Administrative Law Judges Elwin, Hirtle, and Rooks
BY: Administrative Law Judge Hirtle

[¶1] Both parties appeal from a decision of an administrative law judge (*Knopf, ALJ*) granting Raymond Corson's Petitions for Award and for Payment of Medical and Related Services regarding a November 13, 2018, date of injury. John Lucas Tree Experts (Lucas Tree) contends that the ALJ committed reversible error in finding a causal relationship between Mr. Corson's work and the aggravation of his bilateral foot condition of unknown diagnosis. Mr. Corson cross appeals, contending the ALJ erred in determining his retained earning capacity and made inadequate findings of fact regarding the number of hours he remains able to work. We disagree with Lucas Tree's contention and affirm the ALJ's finding of causation.

However, we agree with Mr. Corson's contentions, vacate the decision in part, and remand for further findings on the issue of retained earning capacity.

I. BACKGROUND

[¶2] Raymond Corson is a high school graduate. He served in the army and then worked for Lucas Tree for 31 years. His work for Lucas Tree required him to be on his feet, working outdoors and walking on rough, uneven terrain. As established in a prior decree, Mr. Corson had a preexisting, bilateral foot condition.[1] He experienced a gradual worsening of symptoms in 2018 and completed a First Report of Injury listing the work injury date as November 15, 2018. Thereafter, he worked light duty for Lucas Tree until sent home on February 18, 2019, when his restrictions prevented him from performing even accommodated work. Mr. Corson then brought his petitions under the Act asserting that his bilateral foot condition was work related.

[¶3] During this litigation, two of Mr. Corson's medical providers opined that his condition was work related but did not settle on a diagnosis for his condition. In a decision dated September 11, 2020, the ALJ relied upon the opinions of these providers to find that his bilateral foot condition is causally connected to his work

[1] The parties had previously litigated a September 11, 2012, foot injury resulting in a 2018 board decision. That decision established that Mr. Corson's left foot condition was work related and his right foot condition was not. The litigation which brings about the current appeal also included petitions filed by Mr. Corson regarding the work injury date of September 11, 2012, but the ALJ denied those petitions. Neither party appeals the ALJ's actions regarding the September 11, 2012, work injury date.

activities and established the work injury date of November 13, 2018. The ALJ found that Mr. Corson's foot condition caused him to be restricted to sedentary work. The ALJ then awarded partial incapacity benefits reduced by the ability to earn $11.00 per hour in 2019, and $12.00 per hour in 2020 (reflecting the statutory change in minimum wage).

[¶4] In response to a motion for further findings of fact and conclusions of law filed pursuant to 39-A M.R.S.A. § 318, the ALJ amended the decision and found that even though the diagnosis of Mr. Corson's underlying foot condition was uncertain, the medical evidence was sufficient to support a finding that the 2018 gradual aggravation of his preexisting foot symptoms was causally related to his work, and his work activity contributed to his disability in a significant manner. *See* 39-A M.R.S.A. § 201(4).

[¶5] Regarding his level of incapacity, the ALJ found that "there is no limit on the number of hours he can work." Mr. Corson represents that Lucas Tree then began paying him partial incapacity benefits reduced by an imputed earning capacity of 40 hours per week multiplied by $12.00 per hour. This appeal and cross appeal followed.

II. DISCUSSION

A. Medical Causation: Unknown Diagnosis

[¶6] Lucas Tree contends the ALJ's determination that Mr. Corson sustained a compensable work injury as of November 13, 2018, constitutes legal error because the record does not contain a medical diagnosis connecting the preexisting condition or the work injury to Mr. Corson's employment. We disagree.

[¶7] This case involves an alleged work injury combined with a preexisting medical condition. Therefore, liability is determined pursuant to 39-A M.R.S.A. § 201(4). *McAdam v. United Parcel Serv.*, 2001 ME 4, ¶ 11, 763 A.2d 1173. Section 201(4) states:

> 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.

39-A M.R.S.A. § 201(4). "When a case appears to come within section 201(4), the [ALJ] must first determine whether the employee has suffered a work-related injury . . . then [section] 201(4) is applied if the employee has a condition that preceded the injury." *Celentano v. Dep't of Corr.*, 2005 ME 125, ¶ 9, 887 A.2d 512.

[¶8] To establish a work injury in a combined effects case, "the 'arising out of and in the course of employment' requirement is satisfied by showing both medical and legal cause." *Id.* ¶ 12. Legal causation is not at issue in this case. Medical causation can be shown when the work activity or incident does in fact

produce the onset of symptoms. *See id.* ¶ 13; *see also Bryant v. Masters Mach. Co.*, 444 A.2d 329, 338-39 (Me. 1982). It can also be demonstrated where the work increases the disabling effects of an already symptomatic preexisting condition. *See Bryant*, 444 A.2d at 339-341 and n.11.

[¶9] As noted by the ALJ, the 2018 decree established that Mr. Corson had a preexisting bilateral foot condition. Additionally, the ALJ credited two medical providers who opined that Mr. Corson consistently described bilateral foot discomfort since 2015. Because the finding that Mr. Corson suffered from a preexisting, bilateral foot condition is supported by competent evidence, it is not subject to reversal on appeal. 39-A M.R.S.A. § 318. There is no requirement in section 201(4) that the preexisting condition be work-related, thus there is no requirement for a medical diagnosis attributing the preexisting condition to the employment.

[¶10] With regard to the 2018 aggravation injury, the ALJ found that the medical records "plainly and uniformly" reflect an increase in symptoms starting in November 2018 at the latest. She further found that the increase in symptoms resulted in disability for the first time in 2018, requiring Mr. Corson to be off his feet for 95% of his workday. Additionally, the ALJ found that the increase in symptoms was caused by Mr. Corson's work, which required walking on rough, uneven terrain. These findings are sufficient to establish a work injury, and have

support in the record, particularly in Dr. Goodman's medical records which show a direct correlation between Mr. Corson's pain level and his work, and in Mr. Corson's testimony that his pain increased significantly throughout the workday. *See Celentano*, 2005 ME 125, ¶ 17. This competent evidence also supports the conclusion that the employment contributed to the resulting disability in a significant manner. *See Briggs v. H & K Stevens, Inc.*, W.C.B. No. 14-24, ¶ 23 (App. Div. 2014) (holding that standing or walking on a hard surface for prolonged periods for work contributed to disabling foot condition in a significant manner).

[¶11] While there is no medical diagnosis clarifying the cause of Mr. Corson's increased foot pain, the ALJ found that work caused the aggravation injury, reasoning that "[d]isability due to an increase in symptoms caused by work activity is sufficient to constitute an injury under the Act," citing *Bryant*, 444 A.2d 329. The ALJ neither misconceived nor misapplied the law. The evidence established that the work activity produced the onset of symptoms and increased the disabling effects of an already symptomatic preexisting condition; this is sufficient to establish a work injury. *See Bryant*, 444 A.2d at 338-39. Thus, the ALJ did not commit reversible legal error when determining that the 2018 aggravation injury was compensable.

B. Adequate Findings: Work Capacity

[¶12] Mr. Corson contends that the ALJ erred by setting his imputed earning capacity without considering his age, education, time out of work, and lack of

computer skills. Further, Mr. Corson argues that the ALJ's findings are inadequate because the ALJ did not specify how many hours per week he remains able to work and instead found only that there was "no limitation on the number of hours he can work." We agree with these contentions.

[¶13] Because Mr. Corson requested additional findings of fact and conclusions of law and submitted proposed findings, we do not assume that the ALJ made all the necessary findings to support her conclusions regarding earning capacity. *See Spear v. Town of Wells*, 2007 ME 54, ¶ 10, 922 A.2d 474. "Instead, we review the original findings and any additional findings made in response to a motion for findings to determine if they are sufficient, as a matter of law, to support the result and if they are supported by evidence in the record." *Maietta v. Town of Scarborough*, 2004 ME 97, ¶ 17, 854 A.2d 223. When requested, an ALJ is under an affirmative duty under 39-A M.R.S.A. § 318 to make additional findings to create an adequate basis for appellate review. *See Coty v. Town of Millinocket*, 444 A.2d 355, 357 (Me. 1982). Adequate findings include those that allow the reviewing body effectively to determine the basis of the board's decision. *See Chapel Road Assocs., L.L.C. v. Town of Wells*, 2001 ME 178, ¶ 10, 787 A.2d 137.

[¶14] Post-injury earning capacity is based on both "(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). ALJs are not required to follow any mathematical formula when evaluating an employee's earning capacity. *See, e.g., Thew v. Saunders of Locke Mills, LLC,* Me. W.C.B. No. 13-4, ¶¶ 9-11 (App. Div. 2013). Rather, ALJs may consider a number of relevant factors to arrive at a figure that accurately reflects the employee's ability to earn wages, including age, educational background, intelligence, work experience, and vocational training, among others. *See Morse v. Fleet Fin. Group,* 2001 ME 142, ¶ 9, 782 A.2d 769; *Martin v. George C. Hall & Sons, Inc.,* Me. W.C.B. No. 21-27, ¶ 9 (App. Div. *en banc* 2021).

[¶15] Here, the ALJ noted Mr. Corson's age, education, vocational history, and reported lack of transferable skills. However, the ALJ did not connect Mr. Corson's retained imputed earning capacity to these or any other identified factors. Additionally, the ALJ's finding of "no limitation" on the number of hours he can now work is inadequate to create a reviewable record on appeal.

[¶16] Because the findings on the issue of earning capacity are insufficient for appellate review, we vacate the decision in part and remand so that the ALJ can make clear what factors she considered when assessing Mr. Corson's retained hourly earning capacity, and the number of hours he is able to work in a week.

III. CONCLUSION

[¶17] Competent evidence supports the ALJ's findings on medical causation, and the ALJ neither misconceived nor misconstrued the law regarding the

compensability of the 2018 aggravation injury pursuant to 39-A M.R.S.A. § 201(4). *See Moore v. Pratt & Whitney Aircraft*, 669 A.2d 156, 158 (Me. 1995). However, because the ALJ's findings on the issue of earning capacity are inadequate for appellate review, we vacate the decision in part, and remand for further findings regarding Mr. Corson's retained ability to earn. *See Coty*, 444 A.2d at 357.

The entry is:

> The administrative law judge's decision is affirmed in part, vacated in part, and remanded for further findings consistent with this decision.

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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