

BARBARA MORRIS
(Appellant)

v.

PENOBSCOT BAY MEDICAL CENTER
(Appellee)

and

SYNERNET, INC.
(Insurer)

Conference held: December 6, 2017
Decided: December 21, 2017

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

[¶1] Barbara Morris appeals from a decision of a Workers' Compensation Board Administrative Law Judge (*Elwin, J.*) granting her Petition for Award in part and awarding her ongoing partial incapacity benefits for an April 8, 2015, work injury, based on an imputed earning capacity of \$400.00 per week. Ms. Morris contends that she is entitled to an award of 100% partial incapacity benefits because, although she returned to an accommodated position with Penobscot Bay Medical Center (PMBC) for only a short period after her work injury, she remained in an employment relationship with PBMC, and therefore was not required to prove that work was unavailable to her in the local community as

a result of her injury. *See Monaghan v. Jordan's Meats*, 2007 ME 100, 928 A.2d 786. We disagree.

[¶2] Ms. Morris cites *Parks v. The Home Depot USA, Inc.*, Me. W.C.B. No. 15-20 (App. Div. 2015) in support of her argument. In that case, Mr. Parks had been awarded ongoing 100% partial incapacity benefits following a work-related injury. *Id.* ¶ 6. An Appellate Division panel affirmed the award for a short period during which: Mr. Parks' status as an employee had not been terminated, there was an expectation on the part of both parties that he would return to work with Home Depot, and he was anticipating undergoing additional surgery that would keep him out of work for some time. *Id.* ¶¶ 11-12. Additionally, Mr. Parks had submitted some evidence that he searched for work during that period. *Id.* ¶ 11.

[¶3] The Appellate Division panel vacated the award of 100% partial, however, for the period after his employment relationship with Home Depot ended, reasoning:

An award of 100% partial during a short period of time when employment is expected to continue is not inconsistent with the rationale set forth in *Monaghan*. Once that employment relationship is severed, however, it is incumbent upon the employee to demonstrate that work has become unavailable to him in the local community due to restrictions from his work injury, in order to establish entitlement to 100% partial incapacity benefits. *See Monaghan*, 2007 ME 100, ¶¶ 13-14.

Id. ¶ 14.

[¶4] Although *Parks* stands for the proposition that unavailability of work must be proven after the employment relationship ends, it does *not* stand for the converse: that unavailability of work need not be proven in every case while the employment relationship continues. The employee in *Parks* was awarded 100% partial benefits for a defined period based on numerous factors. None of those factors, except the employment relationship, exists in this case.

[¶5] Ms. Morris did not perform any work for the PBMC for a prolonged period after the work injury and she did not produce any evidence to demonstrate that work was unavailable to her. Thus, the ALJ did not err when declining to award 100% partial incapacity benefits. The ALJ neither misconceived nor misapplied the law in this case, and the findings are supported by competent evidence. *See Pomerleau v. United Parcel Serv.*, 464 A.2d 206, 209 (Me. 1983).

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. 2016).

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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