REBECCA R. MEAD
(Appellee)

v.

FAIRCHILD SEMICONDUCTOR
(Appellant)

and

NEW HAMPSHIRE INSURANCE CO. (AIG)
(Insurer)

Argument: September 26, 2018
Decided: December 23, 2020

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

[¶1] Fairchild Semiconductor appeals from a decision of a Workers' Compensation Board Administrative Law Judge (*Jerome, ALJ*) dismissing its Petition to Determine Permanent Impairment regarding an injury date of December 20, 2010. The ALJ dismissed Fairchild's petition as unripe after finding that a determination of Ms. Mead's permanent impairment level could not affect her award of benefits until January 18, 2021, at the earliest. Fairchild argues that the issue of permanent impairment is ripe for adjudication any time partial incapacity benefits are being paid and that under 39-A M.R.S.A. § 307(1) (2001), it is entitled to a determination. We disagree and affirm the decision.

I. BACKGROUND

[¶2] Rebecca Mead sustained a work related injury on December 20, 2010, while employed by Fairchild Semiconductor. Because of this injury, Ms. Mead is presently receiving partial incapacity benefits pursuant to 39-A M.R.S.A. § 213(1)(A) (Pamph. 2020). Such benefits are subject to a durational limit of 520 weeks unless Ms. Mead's work injury causes more than 12% permanent impairment. *Id*.[1]

[¶3] On March 23, 2017, Fairchild filed its petition seeking adjudication of Ms. Mead's permanent impairment level. An independent medical examiner assigned by the board pursuant to 39-A M.R.S.A. § 312 (Pamph. 2020) assessed Ms. Mead's work injury as causing 12% permanent impairment. No evidence was presented of a permanent impairment rating above the applicable threshold. It took approximately twelve months from Fairchild filing its petition to the ALJ's decision of March 9, 2018.

[¶4] In that decision, the ALJ found that adjudication of Ms. Mead's permanent impairment level was not yet ripe and therefore dismissed Fairchild's petition. Specifically, the ALJ noted that Ms. Mead's condition could improve or

[1] The statute set an initial permanent impairment threshold of 15% and a durational limit of 260 weeks but authorized the Workers' Compensation Board to act through agency rulemaking and adjust both criteria. 39-A M.R.S.A. § 213(2) and (4) (Pamph. 2020). The Board has acted on this authorization over the years to set the applicable criteria in this case of 12% permanent impairment and 520 weeks of benefits. Me. W.C.B. Rule, ch. 2 §§ 1(4) and 2.

worsen in the remaining three years before the durational limit on partial incapacity benefits was reached, obviating the need for a board determination.[2] Based on this analysis, the ALJ concluded that Fairchild's petition did not present an immediate or certain legal problem that would meet the Law Court's standard for ripeness under *Waterville Indus. Inc. v. FAME*, 2000 ME 138, ¶ 22, 758 A.2d 986.

[¶5] Further, the ALJ concluded that adjudicating Fairchild's petition under these circumstances would be inconsistent with the Board's statutory directive to practice the "just and efficient administration of claims." 39-A M.R.S.A. § 153 (Pamph. 2020). In closing, the ALJ advised that a petition filed approximately twelve to eighteen months ahead of the potential expiration of benefits would likely be ripe for litigation.

[¶6] Following the decision, Fairchild did not file a Motion for Additional Findings of Fact and Conclusions of Law pursuant to 39-A M.R.S.A. § 318 (Pamph. 2020), but instead filed a notice of intent to appeal with the board's Appellate Division.

[2] Specifically, the ALJ noted that if Ms. Mead's condition improved and she returned to work earning above her pre-injury average weekly wage, then her award of partial incapacity benefits would cease and the issue of permanent impairment would thus be moot. The ALJ also noted that if Ms. Mead's condition worsened and she was found totally incapacitated to earn, total incapacity benefits awarded under 39-A M.R.S.A. § 212 are not subject to a durational limit and the issue of permanent impairment would thus be moot.

II. DISCUSSION

[¶7] Fairchild argues that the Legislature provided a statutory right to its requested determination on the issue of permanent impairment with 39-A M.R.S.A. § 307(1), which states "[a]ny interested party may seek a determination of rights under this Act by filing with the board any petition authorized under this Act." Ms. Mead argues that the ALJ's ripeness analysis followed the correct standard and complies with the board's statutory mission of 39-A M.R.S.A. § 153 (Pamph. 2020) to adjudicate claims efficiently.[3] We review a dismissal on this ground for abuse of discretion. *See Kuvaja v. Bethel Savings Bank*, 495 A.2d 804, 806 (Me. 1985) (applying abuse of discretion standard of review for administrative body's dismissal of an action).

[¶8] An Appellate Division panel recently addressed a similar situation in *Sawyer v. S.D. Warren Co.*, Me. W.C.B, No. 19-30, ¶ 29 (App. Div. 2019) (affirming dismissal of permanent impairment petition on ripeness grounds). The panel noted that in *Young v. Central Maine Power Company*, 2003 ME 10, ¶ 15, 814 A.2d 998, the Law Court held that a permanent impairment level may be established before the expiration of the durational limit to avoid the potential for

[3] Whether a case is ripe for decision is a question of law. "Ripeness concerns the fitness of the issue for judicial decision and the hardship to the parties of withholding court consideration. A case is fit for judicial decision when there exists a genuine controversy between the parties that presents a concrete, certain, and immediate legal problem." *Waterville Indus. Inc. v. FAME,* 2000 ME 138 ¶ 22 (quotation marks and citations omitted).

overpayment of benefits by the employer. As Ms. Mead has pointed out, however, a number of board decisions subsequent to *Young* have held that permanent impairment petitions filed long before expiration of the durational limit may be dismissed as unripe. *See, e.g.*, *Hosie v. Matrix Power*, W.C.B. 11-006091D (Me. 2017) (dismissing as unripe three years prior); *Peters v. VIP, Inc.*, W.C.B. 04-0030141 (Me. 2012) (dismissing three years prior).

[¶9] The *Sawyer* panel observed that dismissing a petition for permanent impairment on the grounds that it was filed prematurely "serves the interest of administrative economy, because even if permanent impairment below the applicable threshold is established, future litigation may still be required before an employer will be permitted to discontinue benefits." Me. W.C.B. No. 19-30, 29. The panel further cited to the Law Court's recent decision in *Bailey v. City of Lewiston*, holding that the doctrine of *res judicata* bars relitigation of permanent impairment level after an initial determination. 2017 ME 160, ¶¶ 11-17, 168 A.3d 762. "It is therefore "important that permanent impairment not be determined prematurely, precluding the possibility of a change in an employee's medical circumstances—whether improvement or degradation—before the end of the durational limit." *Sawyer*, No. 19-30, ¶ 30.

[¶10] Contrary to Fairchild's position, we do not construe section 307 as carving out the doctrine of ripeness from proceedings under the Workers'

Compensation Act. Although section 307 gives parties a right to seek a determination in each case, an ALJ has an obligation to administer justice efficiently, pursuant to section 153. We find no reversible error in the ALJ's ripeness analysis, and the ALJ acted within the bounds of her discretion when dismissing the petition for review as unripe

The entry is:

The ALJ'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 (Pamph. 2020).

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.

Attorney for Appellant:
Evan M. Hansen, Esq.
John J. Cronan III, Esq.
PRETI, FLAHERTY, BELIVEAU
& PACHIOS, LLP
One City Center
P.O. Box 9546
Portland, ME 04112

Attorney for Appellee:
Samuel K. Rudman, Esq.
LAMBERT COFFIN
One Canal Plaza
P.O. Box 15215
Portland, ME 04101