

HELENA DEROUCHE
(Appellant)

v.

ETHAN ALLEN
(Appellee)

and

CHARTER OAK FIRE INSURANCE
(Insurer)

Argued: July 23, 2015
Decided: July 31, 2015

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

[¶1] Helena Deroche appeals from a decision of a Workers' Compensation Board hearing officer (*Goodnough, HO*) denying her Petition to Determine Entitlement to Rehabilitation Services Pursuant to 39-A M.R.S.A. § 217(2) (Supp. 2014). Ms. Deroche contends that the hearing officer erred by not ordering her employer, Ethan Allen, to reimburse her for the costs of her college education. We affirm the decision.

I. BACKGROUND

[¶2] Helena Deroche, now 46 years old, worked at a variety of jobs after completing high school, including as a cashier, in a mailroom, and as a manager of a convenience store. She worked as a rip saw operator for Andover Wood Products,

formerly a division of Ethan Allen, Inc., for twelve years until she was laid off on March 24, 2009. During that employment she sustained work-related injuries to her left shoulder and neck in in 2007, and to her face, head, and neck in 2008. In 2010, the hearing officer awarded her a closed-ended period of incapacity benefits as a result.

[¶3] A month after her layoff Ms. Deroche began taking classes at the Region 9 Applied Learning Center. She received a grant through the Trade Relief Act to help pay for her education. That fall she enrolled at the University of Maine-Rumford, and she obtained an associate's degree in Mental Health and Human Services in May of 2012. The following September, she enrolled in a bachelor's degree program in the same field at the University of Maine-Augusta.

[¶4] In November of 2012, Ms. Deroche filed her Application for Evaluation of Employment Rehabilitation Services with the hearing officer, pursuant to 39-A M.R.S.A. § 217. By order dated February 28, 2013, the hearing officer granted her Application over Ethan Allen's objection.

[¶5] Ms. Deroche was then evaluated by Steven Freeman, a vocational counselor, who issued a report on May 24, 2013. Mr. Freeman noted that Ms. Deroche was expecting to receive her bachelor's degree in August of that year and that she had already begun a paid internship with Rumford Group Homes. He stated that it "is likely that education would have been a recommendation for this

woman as part of a vocational plan had she attended the Career Education Workshop. However this claimant took her own initiative and enrolled in college.” Mr. Freeman’s recommended plan of action instead included updating her resume, purchasing voice-to-text software, and working with a job developer to secure employment.

[¶6] By August of 2013, Ms. Deroche had completed the remaining requirements for her bachelor’s degree and obtained her Mental Health Rehabilitation Technician/Community certification. Rumford Group Homes immediately hired her as a full-time case manager. Her earnings in this position are higher than either of her pre-injury average weekly wages with Ethan Allen.

[¶7] In April of 2014, Ms. Deroche filed a Petition to Determine Entitlement to Rehabilitation Services Pursuant to 39-A M.R.S.A. § 217(2), by which she requested reimbursement of tuition costs incurred in her final two years at the University of Maine. The hearing officer asked the parties to submit the case for decision upon stipulated facts.

[¶8] In a decision dated October 17, 2014, the hearing officer noted that Ms. Deroche had achieved the ultimate goal of the plan—a return to suitable employment—by the summer of 2013. He determined that Ms. Deroche is entitled to the services outlined in the plan. However, he denied Ms. Deroche’s specific request that Ethan Allen retroactively reimburse her for tuition costs. The hearing

officer based his decision on the following: (1) that tuition payment was not part of the Employment Rehabilitation Plan; (2) that section 217 does not provide for direct payment by an employer to an employee for services that are covered by a plan; and (3) that section 217 does not contemplate retroactive payment for expenditures made by an employee before a plan has been developed.

II. DISCUSSION

[¶9] Ms. Deroche appeals the decision. She contends that the hearing officer erred when determining that section 217 does not allow payment for tuition expenses incurred prior to the development of a plan.¹ We disagree.

[¶10] “When construing provisions of the Workers’ Compensation Act, [the panel’s] purpose is to give effect to the Legislature’s intent.” *Hanson v. S.D. Warren Co.*, 2010 ME 51, ¶ 12, 997 A.2d 730. In so doing, the panel looks to the plain meaning of the statutory language, and construes that language to avoid absurd, illogical, or inconsistent results. *Id.*

[¶11] Section 217 provides, in relevant part:

When as a result of injury the employee is unable to perform work for which the employee has previous training or experience, the employee is entitled to such employment rehabilitation services, including

¹ Ms. Deroche does not contest the other rationales on which the hearing officer based his decision to deny reimbursement of tuition costs—that tuition costs were not part of the recommended plan, and that section 217 does not authorize direct reimbursement of costs to an employee by an employer—each of which could provide an independent basis for denying Ms. Deroche’s request.

retraining and job placement, as reasonably necessary to restore the employee to suitable employment.

1. Services. If employment rehabilitation services are not voluntarily offered and accepted, the board on its own motion or upon application of the employee, carrier or employer, after affording the parties an opportunity to be heard, may refer the employee to a board-approved facility for evaluation of the need for and kind of service, treatment or training necessary and appropriate to return the employee to suitable employment. The board's determination under this subsection is final.

2. Plan ordered. Upon receipt of an evaluation report pursuant to subsection 1, if the board finds that the proposed plan complies with this Act and that the implementation of the proposed plan is likely to return the injured employee to suitable employment at a reasonable cost, it may order the implementation of the plan. Implementation costs of a plan ordered under this subsection must be paid from the Employment Rehabilitation Fund as provided in section 355, subsection 7. The board's determination under this subsection is final.

3. Order of implementation costs recovery. If an injured employee returns to suitable employment after completing a rehabilitation plan ordered under subsection 2, the board shall order the employer who refused to agree to implement the plan to pay reimbursement to the Employment Rehabilitation Fund as provided in section 355, subsection 7.

[¶12] The hearing officer correctly determined that under section 217, Ethan Allen cannot be held liable for costs—no matter how commendable or wise—that were incurred by Ms. Deroche before the development of her Employment Rehabilitation Plan. The plain language of section 217 contemplates an evaluation and a proposal for future action, which an employer can choose to accept and fund, or contest and risk having to reimburse the Employment Rehabilitation Fund up to 180% of the implementation cost, should it be implemented and succeed. The

hearing officer correctly decided that costs incurred before the development of the plan are simply beyond the ambit of section 217.

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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