

ROBERT GAGNON
(Appellee)

v.

TWIN RIVERS PAPER COMPANY, LLC
(Appellant)

and

SEDGWICK CMS

Argument held: June 9, 2016
Decided: April 6, 2017

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

[¶1] Twin Rivers Paper Company, LLC, appeals from a decision of a Workers' Compensation Board administrative law judge (*Pelletier, ALJ*) denying its Petition for Review and refusing Twin Rivers' request to terminate partial incapacity benefits pursuant to the durational limit of 39-A M.R.S.A. § 213(1)(A) (Supp. 2016). Twin Rivers contends that the ALJ erred by construing a prior decision as an award of ongoing total incapacity benefits and by improperly determining Mr. Gagnon's whole person permanent impairment level. We affirm the ALJ's decision in part and vacate the decision in part.

I. BACKGROUND

[¶2] Robert Gagnon is a resident of St. David who worked in the Twin Rivers Madawaska paper mill from 1979 until July of 2004. Mr. Gagnon suffered a

work-related left shoulder injury on January 10, 1986, and was paid benefits in 1990 for 5% permanent impairment by agreement. *See* 39 M.R.S.A. § 56 (repealed by P.L. 1987, Ch. 559 § 22, effective November 20, 1987). Mr. Gagnon continued working for Twin Rivers and suffered a second left shoulder injury on November 20, 1997. After two surgeries failed to return Mr. Gagnon to an adequate level of functioning, he went out of work entirely in 2004.

[¶3] Mr. Gagnon thereafter filed a Petition for Restoration with respect to the 1986 date of injury, and Twin Rivers filed a Petition to Determine Extent of Permanent Impairment with regard to the 1997 date of injury. In a 2011 decision the ALJ stated “[Mr. Gagnon] currently is receiving benefits for total incapacity paid on a voluntary basis by the employer with reference to the November 20, 1997 injury date.” In that decision, the ALJ found that (1) responsibility for Mr. Gagnon’s ongoing incapacity should be apportioned 50% to each date of injury and (2) permanent impairment from the 1997 date of injury was 11%. The ALJ also noted that because of statutory changes between 1986 and 1997, the apportionment issue generated potential advantages to one party or the other because the durational limits on partial incapacity benefits for the respective injuries are different, and benefits paid on the 1986 date of injury were eligible for annual cost of living increases.

[¶4] In this round of litigation, Twin Rivers filed a petition for review related to the 1997 injury. Twin Rivers argued that Mr. Gagnon had received more than 520 weeks of partial incapacity benefits and that his whole body permanent impairment was below the 11.8% threshold to qualify for partial incapacity benefits beyond the 520 week durational limit. The ALJ rejected Twin Rivers' arguments determining that the 2011 decision provides that Mr. Gagnon was receiving total incapacity benefits and Twin Rivers did not submit evidence that Mr. Gagnon possessed only a partial work capacity; thus Twin Rivers did not show that Mr. Gagnon was receiving partial instead of total incapacity benefits.

[¶5] The ALJ, despite the finding of total incapacity, proceeded to determine that 5% permanent impairment from Mr. Gagnon's 1986 injury should be included with the 11% permanent impairment from Mr. Gagnon's 1997 injury to measure whether Mr. Gagnon's permanent impairment from the 1997 injury was above the 11.8% threshold for continued partial incapacity benefits. *See* 39-A M.R.S.A. § 213(1-A)(A) (Supp. 2016). In reaching this conclusion, the ALJ relied upon *Buckley v. S.D. Warren Co.*, 2010 ME 53; 997 A.2d 747. Because combining the two permanent impairment ratings resulted in a figure above the 11.8% threshold for continued partial incapacity benefits, the ALJ concluded that Twin Rivers had not met its burden of persuasion to terminate benefits on that basis. Twin Rivers filed a Motion for Additional Findings of Fact and Conclusions of

Law, which the ALJ granted but made no substantive changes to his conclusions. This appeal followed.

II. DISCUSSION

A. Standard of Review

[¶6] The role of the Appellate Division “is limited to assuring that the [ALJ’s] findings are supported by competent evidence, that [the] decision involved no misconception of applicable law and that the application of the law to the facts was neither arbitrary nor without rational foundation.” *Moore v. Pratt & Whitney Aircraft*, 669 A.2d 156, 158 (Me. 1995) (quotation marks omitted). Because Twin Rivers requested findings of fact and conclusions of law following the decision, the Appellate Division will “review only the factual findings actually made and the legal standards actually applied by the [ALJ].” *Daley v. Spinnaker Inds., Inc.*, 2002 ME 134, ¶ 17, 803 A.2d 446.

B. Termination of Benefits

[¶7] Twin Rivers argues that the ALJ erred in finding that the 2011 decision demonstrated Mr. Gagnon’s ongoing receipt of total, rather than partial, incapacity benefits and by improperly determining Mr. Gagnon’s whole person permanent impairment level.

[¶8] When an employer seeks to terminate partial incapacity benefits due to durational limits, an initial burden of production is placed on the employee to

produce some evidence capable of persuading a reasonable fact finder that there exists a genuine disputed issue regarding the employer's request to terminate benefits. *Farris v. Georgia Pacific-Corp.*, 2004 ME 14, ¶ 17, 844 A.2d 1143. In this case, there is no dispute that Mr. Gagnon met this burden of production. Therefore, Twin Rivers had to prove three elements by a preponderance of the evidence: (1) that Mr. Gagnon received at least 520 weeks of incapacity benefits for the date of injury at issue; (2) that the current weekly benefit is for partial incapacity pursuant to section 213; and (3) that Mr. Gagnon's permanent impairment rating is below the applicable threshold, which in this case is 11.8%. *Id.*; 39-A M.R.S.A § 213; Me. W.C.B. Rule, ch. 2, §§ 1, 2. There is no dispute that Mr. Gagnon received at least 520 weeks of incapacity benefits.

[¶9] Because the dispute at the time of the previous litigation was regarding apportionment between the 1986 and 1997 dates of injury, it was noted that total incapacity benefits were being paid and no more detailed findings about Mr. Gagnon's level of incapacity were made. In the present decision, the ALJ's specific findings were: "[Mr. Gagnon] is receiving benefits for total incapacity pursuant to the September 1, 2011 Board decision ... In this proceeding, [Twin Rivers] has not shown that current benefits are being paid pursuant to Section 213." The ALJ's finding on this issue is supported by competent evidence. Specifically, Twin Rivers' uncontested payment of total incapacity benefits at the

time of the 2011 decision and thereafter is competent evidence to support the ALJ's conclusion that Mr. Gagnon was receiving total incapacity benefits. Additionally, Twin Rivers did not submit any evidence regarding Mr. Gagnon's capacity for work.

[¶10] The ALJ's decision as it pertains to this issue contained no misconception of applicable law and his application of the law to the facts was neither arbitrary nor without rational foundation. Because we affirm the determination that Mr. Gagnon is receiving total incapacity benefits pursuant to section 212, the issue of Mr. Gagnon's permanent impairment level is moot. *Legassie v. Securitas, Inc.*, 2008 ME 43, ¶ 30, 944 A.2d 495 (superseded on other grounds by P.L. 2009, ch. 301 (effective September 12, 2009)). Accordingly, we vacate the ALJ's decision in part, striking paragraphs 4 and 5 of the September 21, 2015, decision where the moot issue of permanent impairment was discussed and decided.¹

III. CONCLUSION

[¶11] We affirm the portion of the ALJ's decision as it relates to the determination that Mr. Gagnon is receiving total incapacity benefits not subject to the durational limit of 39-A M.R.S.A. § 213, and the denial of Twin Rivers'

¹ When deciding the issue of combining permanent impairment from Mr. Gagnon's two injuries, the ALJ relied upon the Law Court's decision of *Buckley v. S.D. Warren Co.*, 2010 ME 42, 997 A.2d 747 instead of the Court's later decision in the same case: *Buckley v. S.D. Warren Co.*, 2012 ME 112, 54 A.3d 1274. Twin Rivers asserts that this is legal error. Because the ALJ's decision regarding permanent impairment is vacated on other grounds, we do not reach this issue.

petition on that basis, as it is supported by competent evidence, and involved no misconception of applicable law. Further, the application of the law to the facts regarding that determination was neither arbitrary nor without rational foundation. The issue of permanent impairment was therefore moot and the ALJ's determination of permanent impairment was error; we therefore vacate paragraphs 4 and 5 of the ALJ's decision. Because the decision otherwise contains an independent and legally sufficient basis to deny the Twin Rivers' petition, we do not remand on this issue.

The entry is:

The administrative law judge's decision is affirmed in part and vacated in part.

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).

Attorney for Appellant:
Anne-Marie L. Storey, Esq.
John K. Hamer, Esq.
RUDMAN WINCHELL
P.O. Box 1401
Bangor, ME 04402-1401

Attorney for Appellee:
William J. Smith, Esq.
SMITH LAW OFFICE, LLC
P.O. Box 7
Van Buren, ME 04785