

STATE OF MAINE
WORKERS' COMPENSATION BOARD

APPELLATE DIVISION
Case No. App. Div. 16-0040
Decision No.17-44

VIOLET BOURGOIN
(Appellee)

v.

NORTHERN MAINE MEDICAL CENTER
(Appellant)

and

SYNERNET
(Insurer)

Conference held: May 17, 2017
Decided: December 15, 2017

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

[¶1] Northern Maine Medical Center (NMMC) appeals from a decision of a Workers' Compensation Board administrative law judge (*Pelletier, ALJ*) granting Ms. Bourgoin's Petition for Award of Compensation regarding a February 7, 2014, injury.¹ The ALJ awarded Ms. Bourgoin a closed-end period of total incapacity benefits, and ongoing partial incapacity benefits calculated based on her pre-injury average weekly wage plus fringe benefits, reduced by her current wage plus fringe benefits earned after resuming employment with NMMC. NMMC argues that the ALJ erred in including Ms. Bourgoin's pre-injury fringe benefits in her average weekly wage because those benefits (1) continued after her injury (albeit after a

¹ The ALJ also granted Ms. Bourgoin's Petition for Payment of Medical and Related Services. That decision is not challenged on appeal.

period of discontinuance); and (2) cost more to NMMC than the post-injury fringe benefits, resulting in a windfall to Ms. Bourgoin. We conclude that NMMC’s arguments lack merit, and therefore affirm the decision.

I. BACKGROUND

[¶2] Violet Bourgoin was injured at work on February 7, 2014. At the time of her injury, she earned \$541.12 per week plus fringe benefits, which NMMC provided and for which it paid \$156.21 per week. Ms. Bourgoin’s injury required surgery. During the subsequent recovery period, NMMC terminated her employment and stopped providing fringe benefits. After she recovered, NMMC rehired Ms. Bourgoin. During her direct examination, Ms. Bourgoin testified that upon her rehire, she “signed up for the same health insurance.” Although NMMC has represented that Ms. Bourgoin’s fringe benefits cost less after her injury than they had before, the record does not contain evidence of the cost of Ms. Bourgoin’s fringe benefits after she resumed employment.

[¶3] The ALJ issued an Amended Decree dated May 23, 2016, establishing Ms. Bourgoin’s injury and awarding her partial incapacity benefits based on the difference between her pre-injury average weekly wage—which included fringe benefits—and her post-injury weekly earnings plus fringe benefits. NMMC appeals this decision on the narrow issue of whether the ALJ should have included fringe benefits in the award.

II. DISCUSSION

A. Standard of Review

[¶4] 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).

B. Fringe Benefits

[¶5] In general, incapacity benefits are calculated as two-thirds of the difference between an employee’s average weekly wage before and after their disabling injury. 39-A M.R.S.A. §§ 213 (Supp. 2016). An employee’s pre-injury average weekly wage does not include the value of employer-provided fringe benefits if those benefits “continue[d] during the disability.” 39-A M.R.S.A. § 102(4)(H) (Supp. 2016). However, “[a]ny fringe or other benefit paid by the employer that does not continue during the disability must be included for purposes of determining an employee’s average weekly wage.” *Id.* Furthermore, when calculating an employee’s partial incapacity benefits, “[t]he fringe benefit package of any subsequent employers must be included in the computation of the employee’s post-injury earnings to the same extent that it is included in the employee’s pre-injury average weekly wage.” Me. W.C.B. Rule, ch. 1, § 5(1).

[¶6] NMMC argues that because it resumed Ms. Bourgoin's health insurance as a fringe benefit upon her re-employment, those benefits "continue during the disability" within the terms of section 102(4)(H) and therefore should be excluded from Ms. Bourgoin's average weekly wage and compensation rate. It asserts that the cost of Ms. Bourgoin's fringe benefits decreased after her injury and that the decree improperly inflates Ms. Bourgoin's compensation rate by effectively treating that decrease as a decrease in earning capacity. Ms. Bourgoin, on the other hand, argues that the evidentiary record is bare of the facts relied upon by NMMC and therefore the ALJ's decision should be affirmed.

[¶7] NMMC's argument is not persuasive. Even if section 102(4)(H) could be interpreted to allow the exclusion of fringe benefits from an employee's average weekly wage after a lapse in those fringe benefits, the evidence in the record is insufficient to demonstrate that Ms. Bourgoin's fringe benefits after her return to NMMC were the same as those she earned before her injury, or that inclusion of pre- and post-injury fringe benefits in average weekly wage results in an inflated benefit to Ms. Bourgoin. Ms. Bourgoin merely testified that she signed up for the same health insurance that she received before her injury. In the absence of evidence regarding the actual costs of Ms. Bourgoin's post-injury fringe benefits, we affirm the ALJ's decision to include those fringe benefits in the award.

III. CONCLUSION

[¶8] The ALJ did not err by including the value of Ms. Bourgoin's fringe benefits in her average weekly wage.

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 (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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