

NOTICE OF INTENT TO APPEAL

STATE OF MAINE
WORKERS' COMPENSATION BOARD
APPELLATE DIVISION
1037 FOREST AVE/ STE 11
PORTLAND, MAINE 04103-3382

CASE NAME: Paul D. Morrison v. City of Sanford
WCB FILE# or AIU CASE#: 11-005321B
ISSUANCE DATE OF DECISION: 03/01/17
MAIL DATE OF DECISION: 03/01/17

CHECK ONE:

- APPELLANT HAS ORDERED TRANSCRIPT
FROM _____
(please notify Appellate Division when you receive transcript)
- TRANSCRIPT HAS ALREADY BEEN PREPARED
- REQUEST HAS BEEN MADE TO REGIONAL OFFICE TO
ORDER TRANSCRIPT

APPELLANT:

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APPELLEE:

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Please include the same information about additional parties on a separate sheet.

NOTICE

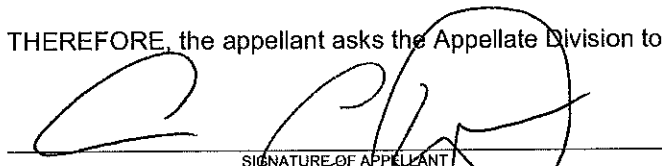
A party in interest may file with the Appellate Division a notice of appeal of a decision by an administrative law judge pursuant to 39-A M.R.S.A. §318 within 20 days after receipt of notice of issuance of the decision by the administrative law judge. When filing this notice, the appellant also shall file with the clerk a copy of the decision appealed.

1. On March 6, 2017, City of Sanford received notice of the issuance of a
MONTH DAY YEAR APPELLANT NAME
decision by Administrative Law Judge Mike Stovall in the above captioned case.
ADMINISTRATIVE LAW JUDGE NAME

2. The appellant appeals the following issue(s):

See "Issues on Appeal" attached hereto as Attachment "A" to WCB-240.

THEREFORE, the appellant asks the Appellate Division to review the decision pursuant to 39-A M.R.S.A. §321-B.


SIGNATURE OF APPELLANT

DATED: March 20, 2017
MONTH DAY YEAR

FILING INSTRUCTIONS

1. Mail original notice to the clerk of the Appellate Division at the above address by regular mail, or hand deliver to any regional Board office.
2. Mail one (1) copy by certified mail, return receipt requested to each other party named above.
3. Keep one (1) copy for yourself and keep the green certified mail cards when returned to you by the U.S. Post Office.

The State of Maine provides equal opportunity in employment and programs. Auxiliary aids and services are available to individuals with disabilities upon request. For assistance with this form, contact the ADA Coordinator at the Maine Workers' Compensation Board. Telephone: (888) 801-9087 or TTY Maine Relay 711.

WCB-240 (eff. 1/1/13, rev. 10/21/16)

PAUL D. MORRISON v. CITY OF SANFORD

WCB No. 11-005321B

Attachment "A" to WCB-240

Box 2: ISSUES ON APPEAL

1. Based on the evidence in the record, what is [are] "standard, medically acceptable test[s] for evidence of the cancer for which the presumption is sought" – specifically oligodendroglioma, a brain cancer?
2. Whether the Board erred in finding as fact [whether competent evidence in the record supports] that the Employee underwent a "standard, medically acceptable test for evidence of the cancer for which the presumption is sought" [oligodendroglioma] which failed to indicate the presence or condition of cancer, as required by Section 328-B (3) of the Act. ("Cancer suffered by a firefighter.")
3. Whether the Board erred in its legal conclusion that W.C.B. Rule, Ch. 2 §10(1) is not invalid because the rule fails to implement and be consistent with, the specific statutory provision which it addresses, Section 328-B (3) of the Act.
4. Where a provision of the Act and a Board rule prove to be inconsistent, must the Administrative Law Judge decline to apply the rule, and apply the statutory standard instead?
5. Whether the Board erred in its legal conclusion that the Employee satisfied the requirements of §328-B of the Act and was therefore entitled to the presumption that his cancer is work related.
6. Where the Board found as fact that the expert evidence as to whether the Employee's oligodendroglioma was caused by his employment was in equipoise, what are the parties' respective burdens of proof or persuasion?
7. Did the Board err in concluding that the Employer bore the burden of proof that the Employee's cancer is unrelated to firefighting?
8. Where an Employee as petitioner in a workers' compensation case is deemed to have the benefit of a statutory presumption, does the rule set forth in *Hinds v. John Hancock Mut. Life Ins. Co.*, 155 Me. 349, 363–64, 155 A.2d 721 (1959) and *Toomey v. City of Portland*, 391 A.2d 325, 330 (Me.1978) apply: "that a presumption is rebutted when evidence is produced that makes it as probable as not that the presumed fact does not exist"?
9. Did the Board err in concluding that the Employer had not carried its rebuttal burden, assuming *arguendo* that the Employee is entitled to the statutory presumption set forth in Section 328-B (2) of the Act?