

NOTICE OF INTENT TO APPEAL

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

CASE NAME: Estate of Lanny Enos v Genuity Inc
WCB FILE# or AIU CASE#: 14-006711C
ISSUANCE DATE OF DECISION: November 16, 2017
MAIL DATE OF DECISION: November 16, 2017

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:

COUNSEL NAME: JANET ENOS
REPRESENTING: Estate of Lanny Enos
STREET/P.O. BOX: P.O. Box 144
CITY, STATE, ZIP: Portland, ME 04112
TELEPHONE NUMBER: _____
E-MAIL: enosa@megafast.net

**WCB
CONFIDENTIAL**

APPELLEE:

COUNSEL NAME: John Chapman, Esq.
REPRESENTING: Genuity Inc. & MEMEC
STREET/P.O. BOX: P.O. Box 168
CITY, STATE, ZIP: Portland, ME 04112
TELEPHONE NUMBER: 207-780-6500
E-MAIL: _____

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 11 24 2017, JANET ENOS received notice of the issuance of a decision by Administrative Law Judge GLENN GOODENOUGH in the above captioned case.

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

See enclosed (2) sheets

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

Janet Enos
SIGNATURE OF APPELLANT

DATED: 11 28 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.

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

The Administrative Law Judge (ALJ) erred in Paragraph 10 & 11, in applying the law; which refers to and includes Paragraphs 1 thru 8, & 12 thru 17, in his statement of “In the absence of clear and convincing contrary evidence.” The ALJ states in Paragraph 3-4 that he has evidence from doctors reports that there was an chemical exposure injury that occurred. ALJ erred in leaving out statement from deceased that one factor for delaying reporting his injury was fear of retaliation from his employer, (in paragraph 3,) is in his doctor’s report. Also, erred in leaving out the presence of blood/scabs in doctor reports in paragraph 4 and a doctor’s report showing clear convincing evidence of a chemical nose burn and small airway inflammation. Also included is a notation from the ALJ stating that the deceased was improving over the summer. Improving is not cured or back to baseline or a state of health before the injury occurred. Dr. Sanal’s report also show he is using an inhaler and is to have a follow up in 6 months. This is not cured by any means, which is again notated in multiple doctor reports that were submitted. Never before had patient needed to use an inhaler. In paragraph 5-6 the ALJ admits signs of depression related to his workplace injury in numerous doctor reports but erred to add the signs in doctor report dated 05/05/2014 shortly after exposure. These are just a small portion of the lists that I will produce for the court in showing there was clear and convincing evidence submitted. The ALJ erred when considering it as medical evidence contrary to the IME’s medical findings.

The Administrative Law Judge erred as a matter of law by failing to apply law(s) 39-A M.R.S.A. § 201(4) and 39-A M.R.S.A. § 201(3.A) both independently and jointly.

The Administrative Law Judge erred in a matter of law when considering/determining Dr. Barkin’s Section 312 report by allowing it in as medical evidence; 39-A M.R.S.A. § 312.7 . In this report item #5 page 14, Dr. Barkin allows the medical report of Jon Musman, M.D. to be included in his overall determination of Mr. Enos. Here, Dr. Musman clearly states he does not have the complete file of the deceased Mr. Enos. The report from Dr. Musman, was produced and paid for by the defense, counsel, Mr. Chapman, Esq., where he knowingly and intentionally withheld evidence in order to provide a positive outcome, deceiving the court; then submitted it to the Administrative Law Judge and Dr. Barkin for review and consideration. At any time, Attorney Chapman could have reached out and provided Dr. Musman the additional medical records for a correct report before submitting it to the ALJ and Dr. Barkin, and failed to do so. The ALJ then failed to charge the opposing counsel with obstruction of justice. Dr. Barkin’s Section 312 report should not have received “weight” and, Dr. Barkin is no longer aligned with 39-A M.R.S.A. § 312.8.

In addition to the determination of the petition by the Administrative Law Judge, the Administrative Law Judge erred in law by applying an incorrect legal standard during the hearing held on April 11, 2017; whereas Attorney Chapman allowed to have a witness bring in outside reports from the employer to read off of in order to answer questions. Those reports were not submitted to the court during this process. Attorney Chapman also provided his laptop computer to the witness so she could read off of it her answers to his questions, of which the ALJ could not see what was on the screen. The laptop computer was not submitted to the court. Attorney Chapman lead the witness and provided the witness with the answers. The Administrative Law Judge should not have allowed this to occur. Therefore, the Administrative Law Judge erred in law by allowing and showing preferential treatment to the opposing counsel. (See hearing transcript.)