LYSSA K. EIGENMANN
(Appellee)

v.

NORTHERN LIGHT
EASTERN MAINE MEDICAL CENTER
(Appellant)

and

EASTERN MAINE GROUP
(Insurer)

Argued: July 12, 2023
Decided: September 26, 2023

PANEL MEMBERS: Administrative Law Judges Stovall, Chabot, and Sands
BY: Administrative Law Judge Stovall

[¶1] Northern Light Eastern Maine Medical Center (EMMC) appeals from a decision of a Workers' Compensation Board administrative law judge (*Hirtle, ALJ*) granting in part Lyssa Eigenmann's Petition for Award. EMMC contends the ALJ erred when (1) determining that Ms. Eigenmann remained eligible to receive wage loss benefits because she did not refuse a bona fide offer of reasonable employment by failing to comply with the State COVID-19 vaccination order, *see* 39-A M.R.S.A. § 214(1)(A); and (2) setting her imputed full-time earning capacity at the dollar amount of the current State minimum wage rather than fashioning the order so that her imputed earning capacity would increase automatically with the State minimum wage. We disagree with these contentions and affirm the decision.

I. BACKGROUND

[¶2] Lyssa Eigenmann was working in her position as an environmental services technician for EMMC on May 12, 2021, when she sustained a work-related injury to her left elbow. She has been restricted to light duty work since that date, but EMMC was able to accommodate that restriction and she continued working without wage loss.

[¶3] Effective August 12, 2021, the Maine Centers for Disease Control and Prevention, an office of the Maine Department of Health and Human Services, instituted a requirement that all workers in health care settings receive a vaccination against the COVID-19 virus. *See* 10-144 C.M.R. ch. 264, § 2(A)(7). Ms. Eigenmann testified that she refused the vaccination based on her religious beliefs. EMMC terminated her employment as of October 29, 2021, because she refused the vaccination. She has not returned to work since, nor has she conducted a work search.

[¶4] Ms. Eigenmann filed a Petition for Award, seeking total incapacity benefits. EMMC contended that Ms. Eigenmann's decision not to receive a COVID-19 vaccine amounted to a refusal of a bona fide offer of reasonable employment without good and reasonable cause. *See* 39-A M.R.S.A. § 214(1)(A). The ALJ disagreed and awarded Ms. Eigenmann partial incapacity benefits reduced by a full-

time imputed earning capacity, based on the State minimum wage of $12.75 per hour or $510.00 per week.

[¶5] Pursuant to EMMC's Motion for Further Findings of Fact and Conclusions of Law, the ALJ issued additional findings but did not alter the outcome in the case. EMMC also filed a Motion to Correct Clerical Error, which the ALJ denied. EMMC appeals.

II. DISCUSSION

A. Bona Fide Offer of Reasonable Employment

[¶6] EMMC contends the ALJ erred because, as a matter of law, Ms. Eigenmann's conduct in deciding not to get vaccinated against COVID-19 constitutes a refusal of a bona fide offer of reasonable employment under 39-A M.R.S.A. § 214(1)(A), without good and reasonable cause.

[¶7] Section 214(1)(A) provides that an employee who receives a "bona fide offer of reasonable employment" and refuses that employment without good and reasonable cause is not entitled to receive wage loss benefits during the period of refusal. *See* 39-A M.R.S.A. § 214(1)(A).[1] This rule allows employers to mitigate the

[1] Title 39-A M.R.S.A. § 214(1)(A) provides:

> If an employee receives a bona fide offer of reasonable employment from the previous employer or another employer or through the Bureau of Employment Services and the employee refuses that employment without good and reasonable cause, the employee is considered to have voluntarily withdrawn from the work force and is no longer entitled to any wage loss benefits under this Act during the period of the refusal.

cost of workers' compensation benefits and encourages injured employees to return to work. *See Thompson v. Earle W. Noyes & Sons, Inc.*, 2007 ME 143, ¶ 7, 935 A.2d 663. Accordingly, an employee must accept a bona fide offer of reasonable employment "absent good and reasonable cause for refusal." *Id.* (quotation marks omitted). Otherwise, the employee will be considered to have voluntarily withdrawn from the work force and will be ineligible for incapacity benefits during the period of the refusal. 39-A M.R.S.A. § 214(1)(A). The employer bears the burden of proving that an employee received an offer of reasonable employment. *See Avramovic v. R.C. Moore Transp., Inc.*, 2008 ME 140, ¶ 14, 954 A.2d 449.

[¶8] "An existing employment relationship implicitly constitutes an ongoing 'offer' of employment, thereby obviating the need for an employer to make a formal, affirmative offer of employment." *Holt v. Sch. Admin. Dist. No. 6*, 2001 ME 146, ¶ 7, 782 A.2d 779. "[W]hen an employee resigns from a current employment relationship, the employee, in effect, rejects the employer's ongoing offer to come to work." *Id.*

[¶9] EMMC contends that because it was within Ms. Eigenmann's power to continue working by complying with the new regulation, her behavior constitutes a refusal of EMMC's offer of continued employment. We disagree.

[¶10] When an employee is terminated for cause, section 214(1)(A) does not apply because there is neither an ongoing offer of work nor a refusal of an offer. *See*

Bureau v. Staffing Network, 678 A.2d 583, 590 (Me. 1996) (determining the employee's termination for cause unrelated to the work injury did not constitute a "refusal" of an "offer" of employment); *Cousins v. Georgia-Pacific Corp.*, 599 A.2d 73, 74 (Me. 1991) (holding that an employee's discharge for willful misconduct did not preclude a restoration of incapacity benefits).

[¶11] The ALJ determined that Ms. Eigenmann's conduct in refusing the vaccination did not constitute a refusal of an offer of work, citing *Cote v. Great Northern Paper*, 611 A.2d 58 (Me. 1992). In *Cote*, the employee was out of work due to work-related injuries. *Id.* The employer offered her an accommodated position within her restrictions but required that she undergo drug testing as a condition of returning to work. *Id.* The employee did not pass the drug test and was not permitted to return to work. *Id.* Great Northern argued that the employee's failure to pass the drug test amounted to a refusal of an offer of employment that should preclude her from receiving further incapacity benefits, under the predecessor statute to section 214(1)(A), 39 M.R.S.A. § 66-A(6). *Id.*

[¶12] The Law Court rejected Great Northern's argument, reasoning that the Legislature had set out very specific and limited behavior that would bar an employee's claim for benefits. *Id.* at 59. Accordingly, the ALJ in this case determined that Ms. Eigenmann refusal to get vaccinated for COVID-19 did not

constitute a constructive refusal of suitable work that might bar a claim for incapacity benefits.

[¶13] Based on the Law Court's precedents, we conclude that the ALJ neither misconstrued nor misapplied section 214(1)(A) when determining that Ms. Eigenmann was not barred by her conduct from receiving workers' compensation benefits. Because we affirm the ALJ's decision on this basis, we do not decide whether Ms. Eigenmann's stated reason for refusing the vaccine constituted good and reasonable cause.

B. Imputed Earning Capacity Based on Minimum Wage

[¶14] EMMC contended in its Motion to Correct Clerical Error that because the State minimum wage was scheduled to increase as of January 1, 2023, the ALJ should have imputed an earning capacity based on the minimum wage generally rather than on the specific minimum wage in effect at the time, so that that the partial benefit could be adjusted automatically without need for further litigation. EMMC renews this argument on appeal.

[¶15] The ALJ denied the motion, reasoning that a determination regarding earning capacity was not the proper subject of a motion to correct clerical error, and even if it were, the argument lacked merit. We find no error.

[¶16] An Appellate Division panel has held that an increase in the State's minimum wage in and of itself is not a proper basis to reduce compensation benefits based on an imputed earning capacity, reasoning:

> Although we agree that an increase in the minimum wage may represent changed economic circumstances, we conclude that the ALJ applied incorrect legal principles in this case when reasoning that a change in the minimum wage changes the economic circumstances of every individual whose imputed income was initially based on the minimum wage. Changed economic circumstances remains a case specific inquiry and should not be viewed in a vacuum. Allowing a statutory change in the minimum wage, by itself, to automatically constitute a change in an individual employee's economic circumstances assumes the availability of theoretical opportunities to earn without evidence of actual ones.

Carver v. WalMart, Me. W.C.B. No. 21-30, ¶ 12 (App. Div. 2021) (footnote omitted). Thus, EMMC would not be entitled to an automatic reduction in the partial benefit when the minimum wage rises. Proof of changed circumstances would be required. *Id.* ¶ 17.

III. CONCLUSION

[¶17] The ALJ neither misconstrued nor misapplied the law when determining that Ms. Eigenmann was not barred from receiving workers' compensation benefits pursuant to 39-A M.R.S.A. § 214(1)(A), and when denying the Motion to Correct Clerical Error. *See Pomerleau v. United Parcel Serv.*, 464 A.2d 206, 209 (Me. 1983).

The entry is:

The administrative law judge'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.

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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