

**STATE OF MAINE  
WORKERS' COMPENSATION BOARD**

**DECISION NO.: WCB-213-24-01  
DECISION OF BOARD OF DIRECTORS**

For the Employee:

For the Employer/Insurer

Jerome Weiss  
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Mail Date: May 22, 2024  
WCB Case No.: 09-00-30-41

Date of Injury: 02/03/2009

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Within 20 days after receiving this decision, a party may file a motion pursuant to 39-A MRSA §318 asking the Board to find further facts and make further conclusions of law and to file the appropriate decision if it differs from the original decision. Within 15 days after filing the motion pursuant to §318, the party shall file its proposed findings of fact and conclusions of law pursuant to WCB Rule ch. 12 §15.

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 20 days of receipt of this decision, and by filing a petition seeking appellate review with the Law Court within 20 days thereafter. *See* 39-A M.R.S.A. § 322.

Pursuant to WCB Rule ch. 12 §19, all evidence and transcripts in this matter may be destroyed after 60 days 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. The 60 days will not begin to run until all post-decree motions have been decided or otherwise disposed.

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JEROME WEISS  
(Employee)  
v.

MAINE SOAPSTONE COMPANY  
(Employer)  
and

MAINE EMPLOYERS' MUTUAL INSURANCE COMPANY  
(Insurer)

**BEFORE:** EXECUTIVE DIRECTOR ROHDE, CHAIR; AND DIRECTORS BURROUGHS, DEWOLFE, GENDREAU, GREEN, AND PICARD

Pending before the Board is a Petition for Extension of Benefits Due to Extreme Financial Hardship Pursuant to 39-A M.R.S.A. § 213(1)(A) filed by Jerome Weiss on November 28, 2022. A hearing was held before the directors of the Workers' Compensation Board at the Caribou Regional Office on May 14, 2024. The employee appeared Pro Se. The employer was represented by Travis Rackliffe, Esq.

5-22-2024  
Mailed to J. Weiss & Travis Rackliffe, Esq.

The directors deliberated at the conclusion of the hearing in front of the parties. By a vote of 5-1, the directors denied the petition for extension of benefits. This written decision followed.

### EVIDENCE

Mr. Weiss was the sole witness to offer testimony. A notebook containing 27 Joint Exhibits consisting of 760 pages was admitted into evidence by agreement of the parties. The Board took administrative notice of all decisions previously issued in proceedings between Mr. Weiss and Maine Soapstone.

At the hearing, Mr. Weiss offered Employee Exhibits 1-3 for admission into evidence. Exhibit 1 is three-page work search log listing 38 job inquiries for the 39-week period from August 8, 2023 - May 7, 2024. Exhibit 2 is a September 8, 2023, letter from Carla Rossignol of Maine Staffing Group about jobs that she assumed were not within Mr. Weiss's restrictions. Exhibit 3 is a September 6, 2023, three-page summary of an interview between Mr. Weiss and a job placement person at Manpower Employment Services. The first page contains bullets with information about physical restrictions, career goals, and work history and the other pages list skills for which Mr. Weiss is purportedly not qualified.

The employer objected to the admission of Employee Exhibit 1 because it was not provided until the May 14, 2024, hearing and the employer was unable to prepare and present rebuttal evidence. The employer objected to Employee Exhibits 2 and 3 because (a) they were not provided sufficiently in advance of the hearing to allow for preparation and presentation of rebuttal evidence, (b) the authors were not available for cross-examination, (c) the documents contained hearsay. The panel declined to admit the exhibits into the evidentiary record.

### FINDINGS OF FACT

1. In a decree dated April 27, 2012, the Administrative Law Judge (ALJ) in Caribou determined that Mr. Weiss sustained a compensable aggravation of a preexisting neck and shoulder condition on February 3, 2009, because of his work at Maine Soapstone Co.

2. The ALJ adopted the restrictions in the §312 report, which set the following restrictions:

no lifting more than 20 to 25 pounds, may lift up to 15 pounds occasionally; avoid frequent lifting with upper extremities; no working above chest level; no overhead work with the right arm; avoid activities requiring repetitive motion of shoulders; avoid frequent flexion, extension, rotation of cervical spine.

3. The employee's work search did not demonstrate that his inability to find work was due to the work injury. The ALJ awarded ongoing partial incapacity benefits at the rate of 55% beginning October 5, 2010.
4. In a December 28, 2017, decree, the ALJ refused to increase the benefit level above 55% because the employee's restrictions were the same as they were in 2012 and the work search failed to demonstrate that the injury prevented the employee from finding employment.

5. Eventually, the employee received social security retirement benefits and the statutory offset reduced weekly benefit payments to \$167.80.
6. Mr. Weiss's weekly payments were terminated effective March 3, 2021, when the ALJ granted the employer's petition to terminate benefits. Mr. Weiss had received more than 520 weeks of benefits, and the evidence did not establish that his permanent impairment exceeded the applicable 12% threshold.
7. After his appeals were exhausted, Mr. Weiss filed the pending petition seeking an extension of benefits beyond the 520-week durational limit.
8. At the May 14, 2024 hearing, Mr. Weiss confirmed that he has not worked since 2009.
9. Mr. Weiss testified that he suffers extreme financial hardship.
10. Mr. Weiss's monthly income is \$1156.00 and his expenses are \$1589.50. He has outstanding bills that are extremely difficult to pay. Photographs show that his residence requires numerous repairs, which he cannot afford.
11. Mr. Weiss expressed his belief that restrictions from his injury prevent him from obtaining gainful employment.
12. The medical evidence does not reveal a change in restrictions since the 2017 decree.
13. Mr. Weiss could not recall the last time he sought medical treatment for symptoms caused by his injury, although he estimated it was in January of 2023.
14. At the May 14, 2024, hearing, Mr. Weiss presented work search evidence that covers a 14-year period.
15. Mr. Weiss testified that he did not seek help from a job placement service to locate a job within his restrictions and he relied heavily on the internet.
16. Mr. Weiss's work search record consists of approximately 750 job inquiries, which equates to only about one inquiry per week.
17. Many of the job inquiries have already been judged by the ALJ in past rounds of litigation.
18. In 2012, the ALJ found that Mr. Weiss targeted familiar carpentry jobs, but they were unavailable because they were beyond his limitations. The ALJ concluded that Mr. Weiss's search was not in good faith to find a job.
19. In 2017, the ALJ noted that Mr. Weiss looked into a wider array of jobs than in 2012, but employers did not acknowledge applications and no interviews were conducted. Maine Soapstone Co. presented labor market evidence for one of the months that fell within Mr. Weiss's 2017 work search and found two open jobs within Mr. Weiss's restrictions. The Board found that Mr. Weiss's job search was likely conducted for litigation purposes and not in good faith to find a job.

DISCUSSION

Pursuant to 39-A M.R.S.A. § 213(1) (A), the employee will be entitled to an extension of partial benefits beyond the 520-week durational limit if he proves that he is experiencing extreme financial hardship due to inability to return to gainful employment.

The evidence supports Mr. Weiss's claim that he is experiencing extreme financial hardship. His expenses exceed his income. His residence is in disrepair. He has difficulty paying expenses.

Mr. Weiss's 14-year work search has not been tailored to his restrictions. It was not conducted with the assistance of a job placement service, which would have put him in a stronger position to find a job. Many of the places he visited were not hiring for jobs within his restrictions. His work search consisted of only about one inquiry per week. His leads were principally generated from the internet. As stated in the 2012 decree, his search was limited to people that he knew from prior work experiences in carpentry. In summary, the work search was not targeted to available and appropriate work. Mr. Weiss failed to establish that he was unable to obtain gainful employment.

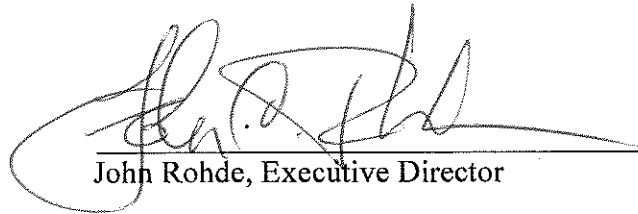
CONCLUSIONS OF LAW

The employee has not met his burden of proving that he is unable to obtain gainful employment. Therefore, the employee's Petition for Extension of Benefits Due to Extreme Financial Hardship pursuant to 39-A M.R.S.A. § 213(1)(A) is hereby denied.

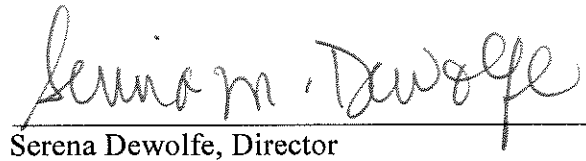
**WORKERS' COMPENSATION BOARD**

**Voting YES:**

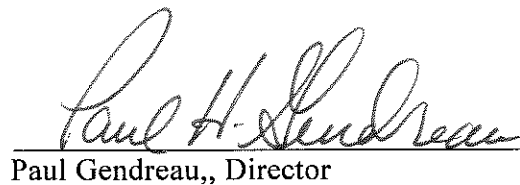
5/20/24  
Date

  
John Rohde, Executive Director


~~5/21/24~~ 5/21/24  
Date

  
Serena Dewolfe, Director

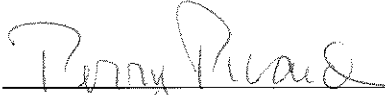
5/20/24  
Date

  
Paul Gendreau, Director

May 20, 2024  
Date

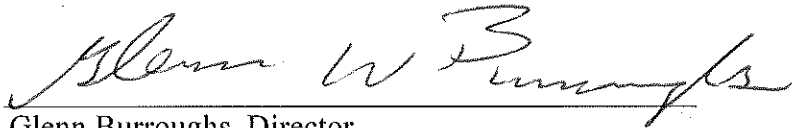
  
Ronnie Green, Director

05/17/2024  
Date

  
Penny Picard, Director

**VOTING NO:**

5/20/2024  
Date

  
Glenn Burroughs, Director

A true copy

ATTEST

  
WCB CLERK