

STATE OF MAINE ISSUED: September 12, 2000

WORKERS' COMPENSATION BOARD DECISION NO.: 2000-02

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WCB FILE NO.: 88-071659

SSN: ***_**_****
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Mail Date:

Any party in interest may request an appeal to the Maine Law Court by filing a copy of this order and the Hearing Officer's decision with the clerk of the Law Court within 20 days of receipt of this order, and by filing a petition seeking appellate review with the Law Court within 20 days thereafter. *See* 39-A M.R.S.A. Sec. 322.

Pursuant to Board Rule Chapter 12 Sec. 19, all evidence and transcripts in this matter will be destroyed after 60 days unless (1) we receive 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.

Harry J. Simard
(Employee-Appellee)

v.

Great Northern Paper Co.
and
Sedgwick James Company
(Employer/Insurer-Appellant)

Before: Monfiletto, chair; Accomando; Gauvin; Hayes; Lemaire; Longfellow & Weeks,
Directors

DECISION AND ORDER

PER CURIAM.

Pending before the Board is a request for review of a February 14, 2000 Hearing Officer decision. The request was made pursuant to 39-A M.R.S.A. §320. Deliberations in this case were conducted on August 29, 2000.

The employee suffered a back injury on October 4, 1988. On July 1, 1999, he filed a Petition for Restoration. On October 5, 1999, Dr. Ernesto Ballesteros was appointed by the Office of Medical and Rehabilitation Services to perform a Section 312 examination. The exam took place on October 19, 1999.

At a hearing on December 10, 1999, the employer objected to the characterization of Dr. Ballesteros' report as a Section 312 report. The Hearing Officer found that: Dr. Ballesteros was not an actively treating physician, and had not been since July of 1998; at the time he was appointed he was on the Board's list of Section 312 examiners. The Hearing Officer also ruled that he did not have the authority to decide who shall be accepted as a Section 312 examiner.

Upon a majority vote, the decision of the Hearing Officer is vacated. A Hearing Officer shall not consider a physician who is retired as a Section 312 physician because the Board's rules specifically state that a Section 312 physician must have an active treating practice.

On remand, the Hearing Officer shall order a new Section 312 independent medical examination from the list of Board approved physicians.

SO ORDERED.

VOTING YES:

Anthony Monfiletto, Chair
Thomas Accomando
David Gauvin
Frederick Hayes
Barbara Longfellow
Charles Weeks

VOTING NO:

Patricia Lemaire