PAULINE PLEAU
(Appellee)

v.

MAINE VETERANS HOMES,
(Appellant)

and

MEMIC
(Insurer)

Argued: April 9, 2025
Decided: May 29, 2025

PANEL MEMBERS: Administrative Law Judges Stovall, Murphy, and Biddings
By: Administrative Law Judge Biddings

[¶1] Maine Veterans Homes (MVH) appeals from a decision of a Workers' Compensation Board administrative law judge (*Rooks, ALJ*) denying its Petition for Review of Incapacity regarding a December 21, 2012, date of injury. MVH contends that the ALJ erred in finding that Ms. Pleau had met her burden of showing a change in economic circumstances sufficient to overcome the res judicata effect of a prior decree, because the evidence of changed circumstances is unrelated to the work injury. We disagree with MVH's contentions and affirm the decision.

I. BACKGROUND

[¶2] Pauline Pleau suffered a work-related low back injury on December 21, 2012, while working as an LPN for MVH. Following the injury, Ms. Pleau continued

to work for MVH until her work restrictions could no longer be accommodated. Her employment with MVH was terminated in July of 2013.

[¶3] Ms. Pleau filed Petitions for Award of Compensation and for Payment of Medical and Related Services. Dr. Donovan was appointed independent medical examiner pursuant to 39-A M.R.S.A § 312.[1] He issued a report dated April 28, 2015, concluding that Ms. Pleau retained a part-time work capacity. Ms. Pleau had, in fact, found part-time work with a new employer, St. Andre's Home, as of July 20, 2015. The ALJ (*Hirtle, ALJ*) issued a decree determining that Ms. Pleau's earnings with her new employer were a fair approximation of her earning capacity and awarded a fixed partial benefit based on earnings of $330.00 per week (22 hours at $15.00 per hour) from July 20, 2015, forward.[2]

[¶4] In December of 2021, MVH filed Petitions for Review of Incapacity and to Determine Extent of Permanent Impairment regarding Ms. Pleau's December 21, 2012, date of injury, pursuant to 39-A M.R.S.A § 205(9)(B). MVH sought

[1] Title 39-A M.R.S.A § 312(7) provides:

> The board shall adopt the medical findings of the independent medical examiner unless there is clear and convincing evidence to the contrary in the record that does not support the medical findings. Contrary evidence does not include medical evidence not considered by the independent medical examiner. The board shall state in writing the reasons for not accepting the medical findings of the independent medical examiner.

[2] The ALJ also ordered the payment of partial incapacity benefits based on imputed earnings for the period of January 18, 2014 (the effective date of a discontinuance filed by MVH pursuant to 39-A M.R.S.A. § 205(9)(B)(1)) through July 19, 2015. He concluded that Ms. Pleau's work search was insufficient to entitle her to 100% partial incapacity benefits for that period.

permission to terminate benefits, arguing that Ms. Pleau had received all partial incapacity benefits to which she was entitled pursuant to 39-A M.R.S. § 213(1)(A) and Me. W.C.B. Rule, Ch. 2, § 2(5) (limiting the duration of partial incapacity benefits generally to 520 weeks). In response, Ms. Pleau asserted that since the May 26, 2016, decree, her incapacity level had increased to total, and she is no longer subject to the durational cap on partial benefit payments.

[¶5] Dr. Donovan performed a second independent medical examination on January 12, 2023. In his report, he wrote that during his examination of Ms. Pleau, she "fairly unequivocally states her condition has not changed since her last [e]valuation with this office." With respect to the issue of work capacity, Dr. Donovan stated:

> Ms. Pleau has demonstrated work ethic post 12/21/2012 work injury. The fact that though her LPN work qualifies her and she has had desire to take care of her mother, she has hired 24/7 help indicates she indeed has a disabling condition[.] Latest M-1 reviewed from NP MacDonald lists her as having a condition requiring lifetime treatment with no work capacity. These facts combined with her presentation today leave me with the opinion Ms. Pleau currently has no real work capacity.

[¶6] In addition to concluding that she has "no real work capacity," Dr. Donovan found that Ms. Pleau had sustained a 3% whole person permanent impairment related to the work injury.

[¶7] A hearing was held on August 9, 2023. Ms. Pleau, then 72 years of age, testified that she'd left her position with St. Andre's Home in July of 2017, due to a nonwork-related health issue, and that she had not worked since that time. She further testified that she had searched for work after leaving her position at St. Andre's Home and moving to Massachusetts, but her search was unsuccessful due to her restrictions. She did not, however, produce any documentation of a work search.

[¶8] Ms. Pleau confirmed that she had told Dr. Donovan that her pain in 2023 was the same as it had been in 2015. She reiterated that statement at the hearing. She testified that she had moved to Massachusetts in 2019 to be an advocate and companion to her mother. She specifically indicated that she does not provide care for her mother.

[¶9] The ALJ (*Rooks, ALJ*) issued a decree on January 31, 2024, which was subsequently amended in response to MVH's Motion to Correct Clerical Error.[3] In addressing MVH's effort to obtain an order terminating Ms. Pleau's partial incapacity benefits pursuant to the durational cap, the ALJ determined that Ms. Pleau had met her minimal burden to produce some evidence capable of persuading

[3] The Motion to Correct Clerical Error was filed by MVH on February 5, 2024, because the original decree did not include a start date for the total incapacity benefits that had been ordered in the decree. The ALJ granted that motion and added the start date for total incapacity benefits but did not otherwise alter the findings of the January 31, 2024, decree.

a reasonable fact finder there existed a genuine disputed issue regarding MVH's request to terminate benefits. *See Farris v. Georgia-Pacific Corp.*, 2004 ME 14, ¶ 17, 844 A.2d 1143. The burden then shifted to MVH to prove the following by a preponderance of the evidence: (1) that Ms. Pleau had received at least 520 weeks of incapacity benefits for the work injury at issue; (2) that her current weekly benefits were for partial incapacity; and (3) that Ms. Pleau's permanent impairment rating was below the statutory threshold for her date of injury. *See id;* Me. W.C.B. Rule, Ch. 2, § 1(4).[4] The ALJ noted that there was no dispute that Ms. Pleau had received 520 weeks of benefits as of December 22, 2022, and that her permanent impairment, assessed by the independent medical examiner as 3%, was below the statutory threshold. This left only Ms. Pleau's current level of incapacity to be addressed.

[¶10] To overcome the *res judicata* effect of the 2016 decree with respect to her level of incapacity, Ms. Pleau was required to show a "change in circumstances" since that decree, either through "comparative medical evidence" or evidence of changed economic circumstances. *See Grubb v. S.D. Warren Co*., 2003 ME 139, ¶ 7,

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[4] The Law Court stated in *Farris*:

> [I]n cases falling within section 205(9)(B)(2), when the employee has met his or her burden of producing evidence concerning a level of permanent impairment that would defeat the employer's attempt to impose the cap, the employer bears the ultimate burden of proving that it is entitled to discontinue benefits, e.g., that it has paid the number of weekly benefits required to reach the cap, and that the level of permanent impairment is not above the statutory threshold.

2004 ME 14, ¶ 17.

837 A.2d 117. The ALJ concluded that Ms. Pleau's change in employment status qualified as a change in economic circumstances, thereby overcoming the res judicata effect of the prior decree and permitting the ALJ to revisit the existing payment scheme based on partial incapacity. Because Ms. Pleau had shown a change in economic circumstances, the ALJ did not address whether she had also established a change in medical circumstances.

[¶11] Relying on Dr. Donovan's opinion that Ms. Pleau had no work capacity, a recent M-1 form from Ms. Pleau's treating provider indicating that she had no work capacity, and Ms. Pleau's credible testimony regarding her severe limitations with respect to day-to-day activities, the ALJ found that Ms. Pleau's incapacity level had increased to total. Thus, the ALJ denied MVH's Petition for Review of Incapacity and ordered MVH to commence paying Ms. Pleau total incapacity benefits beginning on January 31, 2024.[5] *See Pratt v. S.D. Warren*, Me. W.C.B. No. 23-01, ¶ 7 n.3 (App. Div. 2023) ("[A] Petition for Review, which calls into question the level of incapacity, may result in an increase or decrease in benefits regardless of which party files the petition.").

[¶12] The ALJ denied MVH's Motion for Findings of Fact and Conclusions of Law. This appeal followed.

[5] The ALJ also granted MVH's Petition to Determine the Extent of Permanent Impairment with a finding that Ms. Pleau has a 3% permanent impairment related to the 2012 work injury.

II. DISCUSSION

A. Standard of Review

[¶13] In general, the role of the Appellate Division "is limited to assuring that the [ALJ's] findings are supported by competent evidence, that [the] decision involved no misconception of applicable law and that the application of the law to the facts was neither arbitrary nor without rational foundation." *Moore v. Pratt & Whitney Aircraft,* 669 A.2d 156, 158 (Me. 1995) (quotation marks omitted). Because MVH requested findings of fact and conclusions of law following the decision, the Appellate Division is to "review only the factual findings actually made and the legal standards actually applied by the [ALJ]." *Daley v. Spinnaker Indus., Inc.*, 2002 ME 134, ¶ 17, 803 A.2d 446 (quotation marks omitted).

B. Change of Economic Circumstances

[¶14] MVH contends that Ms. Pleau's loss of employment in 2017 cannot form the basis of a change in economic circumstances sufficient to overcome the res judicata effect of the 2016 decree because the change is unrelated to the work injury. We disagree with this contention.

[¶15] "[V]alid and final decisions of the Workers' Compensation Board are subject to the general rules of res judicata and issue preclusion, not merely with respect to the decision's ultimate result, but with respect to all factual findings and legal conclusions that form the basis of that decision." *Grubb v. S.D. Warren Co.,*

2003 ME 139, ¶ 9, 837 A.2d 117 (citations omitted). The Law Court has stated that when a benefit level has been established by a previous decision, the party seeking to increase or decrease benefits "must first meet its burden to show a 'change of circumstances' since the prior determination, which may be met by either providing 'comparative medical evidence' or by showing changed economic circumstances." *Id.* at ¶ 7.

[¶16] The purpose of the "changed circumstances" rule is related to the doctrine of res judicata and is intended "to prevent the use of one set of facts to reach different conclusions." *McIntyre v. Great North Paper, Inc.,* 2000 ME 6, ¶ 5, 743 A.2d 744 (citing *Folsom v. New England Tel. & Tel. Co.,* 606 A.2d 1035, 1038 (Me. 1992)). To determine whether changed circumstances exist, "it is necessary to determine the basis on which the previous award has been made." *McIntyre,* 2000 ME 6, ¶ 6.

[¶17] At the time of the 2016 decree, Ms. Pleau was actively employed in a part-time position consistent with her physical restrictions. Her earnings at St. Andre's Home formed the basis for the award of ongoing partial incapacity benefits. By the time that the 2024 decree was issued in this case, Ms. Pleau was no longer employed and had been without earnings for more than 6 years.

[¶18] A review of case law from the Appellate Division and the Law Court fails to offer support for the contention that a change in economic circumstances

must be related to the work injury. Rather, the case law indicates that separation from employment, along with a subsequent period of unemployment, is sufficient to establish a change in economic circumstances.

[¶19] For example, in *Boulanger v. S.D. Warren Co.*, Me. W.C.B. No. 19-01, ¶ 42 (App. Div. 2019), the employee was not working at the time of a prior 2005 decree but still had an employment relationship with the employer. *Id.* At some point after the 2005 decree, the employee was separated from that employment. *Id.* Litigation followed in which the issue of changed circumstances was in dispute. Addressing that issue, the Appellate Division wrote:

> Although Mr. Boulanger was not working at the time, the 2005 decree establishes that he had an employment relationship with S.D. Warren and an expectation that the relationship would continue. Thus, his separation from employment since that time constitutes a sufficient change in circumstances to warrant review of the compensation scheme.

Id. (citation omitted)

[¶20] Similarly, in *Tucker v. Associated Grocers of Me., Inc.,* 2008 ME 167, ¶ 9, 959 A.2d 75, the Law Court addressed the issue of changed circumstances where an employee had lost his post-injury employment prior to the execution of a consent decree which established his entitlement to a partial incapacity benefit based on earnings from that employment. Subsequently, the employee was out of work for over a year before finding new employment. *Id.* The employer asserted that the employee had not established an economic change of circumstances in that matter

because the loss of his post-injury position occurred prior to the execution of the consent decree. *Id.* The Law Court stated:

> The hearing officer, however, found that Tucker's economic circumstances had changed not only due to the job loss, but also due to the unanticipated, year-long period of unemployment that followed. This assessment of Tucker's circumstances is supported by the record, is not irrational, and does not misconceive the law. Accordingly, we find no error.

Id.

[¶21] The burden of establishing changed circumstances is separate from a party's general burden of proof with respect to establishing entitlement to benefits. In *Belanger v. Miles Memorial Hospital,* Me. W.C.B. No. 17-23, ¶¶ 11-12 (2017), the employer asserted that the ALJ erred in relying on certain evidence to find that the employee had established a change of circumstances where the ALJ found the same evidence insufficient to support an award of 100% partial incapacity benefits. The Appellate Division affirmed the ALJ's decision in *Belanger,* noting that the employer had cited no authority in support of its contention and stating that evidence may be relevant to an inquiry regarding the employee's economic circumstances even if it does not persuade the ALJ on the issue of benefit entitlement. *Id.*

[¶22] In this case, the ALJ appropriately considered Ms. Pleau's loss of employment and extended time out of work to conclude that there had been a change of economic circumstances sufficient to overcome the res judicata effect of the prior decree. The ALJ then separately considered the evidence related to Ms. Pleau's

current level of incapacity, relying on the opinion of the independent medical examiner and Ms. Pleau's testimony to conclude that Ms. Pleau has no work capacity.

[¶23] The ALJ in this case properly determined that Ms. Pleau had established a change in economic circumstances where the employment upon which the prior award of partial benefits was based had ended and was followed by several years of unemployment. None of the precedents we reviewed required a finding that the change in economic circumstances is related to the work injury. Because we affirm the ALJ's conclusion that Ms. Pleau established a change in economic circumstances sufficient to warrant a review of her current level of incapacity, we do not address the arguments related to whether Ms. Pleau was required to or established a change in medical circumstances.[6] *See Boulanger*, No. 19-1, ¶ 42.

III. CONCLUSION

[¶24] The ALJ's finding that Ms. Pleau had met her burden of establishing a change in economic circumstances is supported by the record. The decision involved no misconception of applicable law and the application of the law to the facts was neither arbitrary nor without rational foundation. Accordingly, we affirm the decision.

[6] As noted above, the burden of showing changed circumstances sufficient to review an employee's level of incapacity as established by a prior decision may be met "by either comparative medical evidence, or by showing changed economic circumstances." *Grubb,* 2003 ME 139, ¶ 7.

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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