

**STATE OF MAINE
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Re: WCB FILE No.: WCB-213-08-01

Within five days after issuing this decision, the hearing officer may request that the full Workers' Compensation Board review the decision. See 39-AM.R.S.A. §322.

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 then filing a petition seeking appellate review with the Law Court within 20 days thereafter. See 39-AM.R.S.A. §322.

BONNIE HOLMES ADAMS
(Employee)
v.
PRESQUE ISLE NURSING HOME
(Employer)
and
MAINE HEALTH CARE ASSOCIATION
(Insurer)

Pending before the Board is the EMPLOYER/INSURER'S MOTION FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW with respect to the Board decision dated January 7, 2008 regarding employee's Petition for Extension of Benefits. In its proposed findings of fact and conclusions of law, the employer argues that the employee's claim should have been denied based on employee's failure to file a timely Petition for Extension of Benefits. See, W.C.B Rule,

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Chapter 2, Section 5. [Request for Extension of Benefits pursuant to 39-A M.R.S.A §213 (1).]

In essence, the employer argues that the Board should give effect to Section 5.2 of Chapter 2, but ignore Section 5.1 of Chapter 2.

However, because the underlying Board decisions determining that the employee's entitlement to partial incapacity under Section 213 had reached their durational limits were subject to appellate review, during which benefits must continue to be paid regardless whether the durational limit has been reached pursuant to Section 205(9) (B) (2), Russell v. Russell's Appliance, 2201 ME. 32, 766 A.2d. 67, no "expiration date" was or could have been determined by Board decree in this case. Except where the "expiration date" is established by final decree of the Board, i.e. where the expiration date for Section 213 benefits is determined in advance by prospective decree, see, Young v. Central Maine Power Co., 2003 ME 10, 814 A.2d 998, the 30 day period for employee to file her petition for extension of benefits will not begin to run until the employer/insurer has sent the notice required by Section 5.1.

The employer also argues that Section 5.1 is void as "ultra vires." However, the employer fails to explain why the Board has the statutory authority to prescribe a 30 day limit on the employee's right to petition for extension of Section 213 benefits on the basis of extreme financial hardship, but lacks the authority to prescribe rules extending employee's entitlement for lost time benefits for the period that the 21 day notice was not sent by the employer, in cases where the expiration date is not set in advance by Board decree. Compare, Bridgeman v. S.D. Warren, 2005 ME 38, 872 A.2d 961 [Board did not exceed its authority in promulgating "14 day Rule" (Ch.1 Sec. 1) even though the rule attached a greater penalty for failure to file a timely NOC than Section 205].

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As supplemented herein, the original decision of January 7, 2008 provides an adequate foundation for appellate review. No further or more detailed findings of fact or conclusions of law are necessary in the circumstances of this case.

WHEREFORE, employer's Motion for Findings of Fact and Conclusions of Law is **DENIED**. The original decision stands.

So Ordered.

Dated: May 20, 2008

Caribou, Maine

Workers' Compensation Board

THOMAS J. PELLETIER
HEARING OFFICER.

PURSUANT TO BOARD RULE CHAPTER 12, §19, ALL EVIDENCE AND TRANSCRIPTS IN THIS MATTER WILL BE DESTROYED IN 60 DAYS UNLESS (1) THIS OFFICE OF THE WORKERS' COMPENSATION BOARD RECEIVES WRITTEN NOTIFICATION THAT ONE OR MORE 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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