STUART O. SEEKINS
(Appellee)

v.

INTERNATIONAL PAPER CO.
(Appellant)

and

SEDGWICK CMS
(Insurer)

Conference held: March 19, 2014
Decided: June 18, 2014

PANEL MEMBERS: Hearing Officers: Jerome, Knopf, and Stovall
BY: Hearing Officer Jerome

[¶1] International Paper Co. appeals from a decision of a Workers' Compensation Board hearing officer (*Goodnough, HO*) granting Stuart Seekins's Petition to Determine Extent of Permanent Impairment for a July 19, 1991, work-related injury.[1] The hearing officer awarded permanent impairment benefits pursuant to 39 M.R.S.A. § 56-B (1989), which was in effect at the time of the July 1991 injury.[2] International Paper contends it was error to award permanent

[1] The hearing officer also granted International Paper's Petitions for Review and to Determine Extent of Permanent Impairment with respect to a November 16, 2002, date of injury, and partial incapacity benefits related to that injury were discontinued. Mr. Seekins does not appeal the decision relating to the 2002 date of injury.

[2] Title 39 M.R.S.A. 56-B(1) (1989) was in effect on July 19, 1991. It was amended in 1991, P.L. 1991, ch. 615, § D-8 (effective Oct. 9, 1991), and has since been repealed, P.L. 1991, ch. 885, § A-7 (effective Jan. 1, 1993). It provided, in relevant part:

impairment benefits because, in prior board decisions, a hearing officer determined that the effects of the 1991 injury had ended.

[¶2] In July 1991, Mr. Seekins suffered a work injury that caused a C6 radiculopathy due to the effects of a muscle strain superimposed on a pre-existing degenerative spur. He underwent a surgical foraminotomy at C5-6 on the right and decompression of the C6 nerve root. The former commission awarded Mr. Seekins a closed-end period of total incapacity benefits coextensive with his surgery and recovery period.

[¶3] Mr. Seekins later filed a Petition for Restoration, seeking benefits for the ongoing effects of the 1991 injury. In a 2005 decree, the hearing officer (*Greene, HO*) denied the petition, concluding that Mr. Seekins's continuing cervical symptoms and resulting incapacity were related to his pre-existing degenerative condition and not the 1991 work injury.

> **1. Weekly benefit**. In the case of permanent impairment, the employer shall pay the injured employee a weekly benefit equal to 2/3 of the state average weekly wage, as computed by the Bureau of Employment Security, for the number of weeks shown in the following schedule:
>
> A. One week for each percent of permanent impairment to the body as a whole from 0 to 14%;
>
> B. Three weeks for each percent of permanent impairment to the body as a whole from 15% to 50%;
>
> C. Four and ½ weeks for each percent of permanent impairment to the body as a whole from 51% to 85%; and
>
> D. Eight weeks for each percent of permanent impairment to the body as a whole greater than 85%.
>
> Compensation under this section is in addition to any compensation under section 54-B or 55-B received by the employee.

[¶4] Mr. Seekins subsequently filed a Petition for Award alleging a gradual cervical spine injury on or about November 15, 2002, the date that he last worked at International Paper. He asserted that his ongoing cervical symptoms were attributable to cumulative trauma from his work activities before November 2002. In a 2006 decree, the hearing officer (*Greene, HO*) denied the petition, determining that Mr. Seekins did not meet his burden to prove that he had suffered a gradual injury causing the same symptoms he had formerly attributed to the 1991 work injury, and noting that in the 2005 decree, he had concluded that the 1991 work injury was no longer contributing to those symptoms.

[¶5] Given these decisions, International Paper maintains that it was error to award benefits for permanent impairment with respect to the 1991 date of injury.[3] We disagree. Incapacity and permanent impairment are similar but separate concepts. "Permanent impairment" was defined as "any anatomic or functional abnormality or loss existing after the date of maximum medical improvement which results from the injury." 39 M.R.S.A. §2(15) (1989).[4] Incapacity is a more limited concept focused narrowly on the issue of the injured employee's ability to earn, *see generally* 39-A M.R.S.A. §§ 212, 213, 214 (2001 & Supp. 2013), and

[3] International Paper argues that the previous board decisions determined that the effects of the 1991 injury had ended and therefore no permanent impairment can be awarded. Although those decisions clearly held that there was no entitlement to ongoing *incapacity* benefits on account of that injury, the issue of entitlement to *permanent impairment* was never decided.

[4] The current Act contains a nearly identical definition. 39-A M.R.S.A. § 102(16) (2001).

incapacity benefits are designed to replace wages, *see generally Doucette v. Washburn,* 2001 ME 38, ¶ 17 & n.12, 766 A.2d 578. As such, it is possible to suffer permanent impairment from a work injury while also not experiencing any incapacity. *See* American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) (recognizing that "[a]n 'impaired' individual is not necessarily 'disabled'").

[¶6] Between 1965 and October 1991—the relevant period here—an award for permanent impairment under the Act had no relation to earnings incapacity or wage replacement. *Doucette,* 2001 ME 38, ¶ 17 & n.12, 766 A.2d 578. "Rather, such an award was based on the loss of function of part of the body due to work-related injury." *Id.*; *see also Boehm v. American Falcon Corp*., 1999 ME 16, ¶ 9, 726 A.2d 692.[5] Accordingly, at that time, a person could receive an award of benefits for permanent impairment despite suffering no incapacity to earn.

[¶7] For this reason, we conclude that the hearing officer did not err when he determined that Mr. Seekins was entitled to permanent impairment benefits under 39 M.R.S.A. § 56-B, despite previous board determinations that he suffered no incapacity from that injury. The hearing officer relied on competent medical

[5] The Legislature has since revised this approach, retaining the concept of permanent impairment as a "rough measure of an employee's overall level of work-incapacity," *Churchill v. Central Aroostook Ass'n for Retarded Citizens, Inc.*, 1999 ME 192, ¶ 11, 742 A.2d 475, that remains relevant when determining the length of time that an employee suffering partial incapacity is entitled to receive workers' compensation benefits. *Harvey v. H.C. Price Co*., 2008 ME 161, ¶ 10, 957 A.2d 960. The amendments do not retroactively abolish permanent impairment benefits for pre-1993 injuries. *Clark v. Int'l Paper Co*., 638 A.2d 65, 67 (Me. 1994).

evidence assessing permanent impairment at 15%, which in turn was based on the AMA *Guides,* without regard to whether the injury caused incapacity. As such, the hearing officer neither misconceived nor misapplied the law. *See Pomerleau v. United Parcel Serv*., 464 A.2d 206, 209 (Me. 1983).

The entry is:

The hearing officer'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 (Supp. 2013).

Attorneys for Appellant:
Travis C. Rackliffe, Esq.
Matthew T. Dubois, Esq.
TUCKER LAW GROUP
P.O. Box 696
Bangor, ME 04402-0696

Attorney for Appellee:
Kevin M. Noonan, Esq.
McTEAGUE HIGBEE, PA
P.O. Box 5000
Topsham, ME 04086-5000