SHARON BURGETT
(Appellee)

v.

NORTHERN MAINE MEDICAL CENTER
(Appellant)

and

SYNERNET
(Insurer)

Argument held: May 18, 2017
Decided: June 22, 2017

PANEL MEMBERS: Administrative Law Judges Collier, Goodnough, and Knopf
By: Administrative Law Judge Goodnough

[¶1] Northern Maine Medical Center (NMMC) appeals from a decision of a Workers' Compensation Board administrative law judge (*Hirtle, ALJ*) granting in part Sharon Burgett's Petition for Review and Request for Provisional Order,[1] and awarding Ms. Burgett partial incapacity benefits in connection with a February 7, 2015, low back injury. NMMC contends that the ALJ erred when determining that Ms. Burgett had good and reasonable cause to decline a bona fide offer of reasonable employment, thereby shielding her from forfeiture of benefits pursuant to 39-A M.R.S.A. § 214(1)(A) (Supp. 2016). We disagree, and affirm the ALJ's decision.

[1] The ALJ also granted Ms. Burgett's Petition for Payment of Medical and Related Services. The ALJ's order with respect to that petition was not appealed.

[¶2] Ms. Burgett was working for NMMC as a certified nursing assistant on February 7, 2015, when she injured her low back while moving a patient. She worked intermittently for several months, based upon her treating nurse practitioner's recommendations. NMMC subsequently made light duty work available, which Ms. Burgett performed until she went out of work in September of 2015, again following the recommendation of her treating nurse practitioner. She thereafter switched providers, and her new physician likewise recommended she remain out of work. Following the advice of her health care providers, Ms. Burgett has not returned to work since September 2015, essentially terminating her employment relationship with NMMC.

[¶3] "[W]hen confronted with an employee's decision to decline a job offer, . . . the Board must determine first, whether the offer was a 'bona fide offer of reasonable employment' and second, whether the employee refused that offer without 'good and reasonable cause.'" *Thompson v. Claw Island Foods*, 1998 ME 101, ¶ 7, 713 A.2d 316. The evaluation of whether an employee's decision to refuse employment is without good and reasonable cause is necessarily broad and fact-based. *See Ladd v. Grinnell Corp.*, 1999 ME 76, ¶ 7, 728 A.2d 1275.

[¶4] Ms. Burgett does not challenge the ALJ's determination that the ongoing light duty work provided by NMMC amounted to a bona fide offer of reasonable employment pursuant to section 214(1)(A). *See Holt v. S.A.D. No. 6*,

2001 ME 146, ¶ 7, 782 A.2d 779. Therefore, Ms. Burgett was obligated to accept that offer (i.e., maintain the employment relationship) absent good and reasonable cause for the refusal. *See Thompson v. Earl W. Noyes & Sons, Inc.*, 2007 ME 143, ¶ 7, 935 A.2d 663.

[¶5] With respect to the second prong of the test, the ALJ was required to consider "all facts relevant to the employee's decision to decline the job offer." *Thompson v. Claw Island Foods*, 1998 ME 101, ¶ 16, 713 A.2d 316. The ALJ determined that Ms. Burgett had good and reasonable cause to refuse the offer, based on the following considerations:

> Given [that both] Ms. Burgett's primary care providers . . . had advised her to stop working at the time of her refusal, I find that the effort, risk, sacrifice or expense associated with continuing to work for the Employer is such that a reasonable person would not accept the offer. Having weighed these factors identified by the Law Court [in *Thompson*], the Employer has not demonstrated on a more probable than not basis that Ms. Burgett refused its job offer without good and reasonable cause at any point up to the date of this decision.

The ALJ therefore found that Ms. Burgett's benefits were not subject to forfeiture from and after September 22, 2015, pursuant to section 214(1)(A).

[¶6] The ALJ's determination that Ms. Burgett acted with good and reasonable cause when relying on the advice of her health care providers to terminate her employment was supported by competent evidence, involved no misconception of the applicable law, and the application of the law to the facts was neither arbitrary nor without rational foundation. *See Moore v. Pratt & Whitney*,

669 A.2d 156, 158 (Me. 1995). Indeed, the ALJ's application of the law to the facts in this case was thorough and well within a sound decisional range. *See Ladd,* 1999 ME 76, ¶ 8, 728 A.2d 1275; *see also Henderson v. Lucas Tree Experts,* Me. W.C.B. No. 16-28, ¶¶ 11-12 (App. Div. 2016).

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 (Supp. 2016).

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