

STATE OF MAINE  
WORKERS' COMPENSATION BOARD

APPELLATE DIVISION  
App. Div. Case No. 16-0008  
Decision No. 16-46

RAYMOND D. BUTLER  
(Appellee)

v.

TWIN RIVERS PAPER COMPANY, LLC  
(Appellant)

and

SEDGEWICK CLAIMS MANAGEMENT SERVICES

Argument held: November 30, 2016  
Decided: December 9, 2016

PANEL MEMBERS: Administrative Law Judges: Collier, Elwin, and Stovall  
BY: Administrative Law Judge Collier

[¶1] Twin Rivers Paper Company appeals from a decision of a Workers' Compensation Board administrative law judge (*Jerome, ALJ*) granting Raymond Butler's Petitions for Restoration. Twin Rivers argues that an earlier board decision (*Greene, HO*) declining to award incapacity benefits and reserving the issue for further decision on petition by Mr. Butler is res judicata and bars the relitigation of the issue in this proceeding.

[¶2] Had the ALJ set a level of incapacity in the earlier decision, res judicata principles would apply and a change of circumstances evaluation would be required. *See Pelletier v. Twin Rivers Paper Co.*, Me. W.C.B. No. 16-38, ¶ 2, (App. Div. 2016). The ALJ, however, specifically declined to make findings on incapacity, reserving the issue and essentially keeping the issue open for future

litigation. *See Thompson v. Consol. Constrs.*, 677 A.2d 554, 555 (Me. 1996) (holding that because the issue of the employee's average weekly wage was expressly reserved in the prior proceeding, the employee was entitled to a recalculation of her incapacity benefits). Res judicata principles are therefore not implicated. For this reason, Mr. Butler was entitled to an analysis of his level of incapacity, and the ALJ provided that analysis.

[¶3] The decision is supported by competent evidence, involved no misconception of applicable law, and 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).

The entry is:

The administrative law judge's decision is affirmed.

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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. 2015).

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