

SANDRA M. PELLETIER
(Appellee)

v.

TWIN RIVERS PAPER COMPANY
(Appellant)

and

SEDGEWICK CMS

Argument held: April 7, 2016

Decided: November 7, 2016

PANEL MEMBERS: Administrative Law Judges Elwin, Goodnough, and Jerome
BY: Administrative Law Judge Goodnough

[¶1] Twin Rivers Paper Company appeals from a decision of a Workers' Compensation Board administrative law judge (*Pelletier, ALJ*) granting Sandra Pelletier's Petitions for Restoration. Twin Rivers argues that an earlier decision of the ALJ finding that Ms. Pelletier failed to prove the extent of her incapacity is res judicata and bars the re-litigation of the issue in this proceeding. Twin Rivers further argues that the ALJ erred when he determined that Ms. Pelletier was partially incapacitated, because Ms. Pelletier allegedly failed to meet her burden to demonstrate that work was unavailable as a result of the work-related injury.

[¶2] Had the ALJ set a level of incapacity in the earlier decision, we would agree that res judicata principles apply and a change of circumstances evaluation would be required. The ALJ, however, specifically declined to make findings on

the incapacity issue in the earlier decision, essentially keeping the issue open for future litigation. Res judicata principles are therefore not implicated. For this reason, Ms. Pelletier was entitled to a new analysis of her level of incapacity, and the ALJ provided that analysis.

[¶3] Ms. Pelletier, in the present round of litigation, presented evidence regarding her partial physical incapacity and the current state of the labor market. Twin Rivers also presented labor market evidence. The ALJ reviewed the state of the labor market as described by both experts, properly derived an earning capacity based upon that evidence, and awarded a fixed rate of partial incapacity benefits as of the date of Ms. Pelletier's labor market survey. 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.

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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