

ANGELA THOMPSON
(Appellee)

v.

THE AROOSTOOK MEDICAL CENTER
(Appellant)

and

CROSS INSURANCE TPA, INC.
(Insurer)

Conference held: December 12, 2018
Decided: February 12, 2020

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

[¶1] The Aroostook Medical Center (TAMC) appeals from a decision of a Workers' Compensation Board administrative law judge (*Pelletier, ALJ*) awarding Angela Thompson ongoing partial incapacity benefits. TAMC argues that the ALJ erred in concluding that Ms. Thompson had sufficient cause under 39-A M.R.S.A. § 214(1)(A) (Supp. 2018) to refuse a bona fide offer of reasonable employment. We affirm the decision.

I. BACKGROUND

[¶2] Ms. Thompson worked as a radiology technician for TAMC for about ten years. On March 17, 2014, she injured her non-dominant left shoulder while maneuvering a heavy patient in a wheelchair. Ms. Thompson underwent surgery for

a torn labrum, developed “frozen shoulder” post-surgery, and then underwent manipulation under anesthesia. She has not returned to work since her date of injury.

[¶3] TAMC initially paid benefits to Ms. Thompson voluntarily, but discontinued paying in October 2016. Ms. Thompson then filed her Petition for Review, along with a request for a Provisional Order, which the ALJ granted in December 2016.

[¶4] Ms. Thompson began treatment for anxiety and depression with a licensed clinical social worker and nurse practitioner. At TAMC’s request, she was examined by Dr. Philip Kimball and Dr. Vincent Herzog pursuant to 39-A M.R.S.A § 207 (Supp. 2018). She also underwent an independent medical examination by Dr. Richard Mazzei pursuant to 39-A M.R.S.A § 312 (Supp. 2018). Dr. Mazzei submitted a report on March 28, 2017, in which he opined that Ms. Thompson “has the capacity to do one-armed light work that does not require bimanual manipulation in pulling, pushing, and repeated overhead activity.”

[¶5] In May 2017, TAMC offered Ms. Thompson accommodated work in the billing department. There is no dispute that the offered job was consistent with restrictions recommended by Dr. Mazzei. Ms. Thompson initially planned to accept TAMC’s offer, but ultimately refused and declined to start the job. At the hearing, Ms. Thompson testified that she based her refusal on the advice of her mental health providers, who recommended that she not resume work until she makes further

progress in her treatment for anxiety. While specifically reserving the issue of whether Ms. Thompson’s psychological condition is work-related, the ALJ determined that the mental health condition exists and, regardless of causation, constitutes good and reasonable cause to refuse the offer of employment, citing *Burby v. Fraser Papers, Inc.*, Me. W.C.B. 14-27, ¶ 2 (App. Div. 2014) (holding that good and reasonable cause to refuse an offer of employment does not need to be work-related).

[¶6] The ALJ granted Ms. Thompson’s Petition for Review and ordered ongoing benefits for partial incapacity. TAMC filed a Motion for Findings of Fact and Conclusions of Law pursuant to 39-A M.R.S.A. § 318 (Supp. 2018), which the ALJ denied. TAMC appeals.

II. DISCUSSION

[¶7] The Appellate Division’s role on appeal “is limited to assuring that the [ALJ’s] findings are supported by competent evidence, that [the] decision involved no misconception of applicable law and that 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) (quotation marks omitted).

[¶8] TAMC argues that the ALJ erred in finding that Ms. Thompson’s psychological condition was sufficient cause for her to refuse the job offer for work

in its billing department. It contends that the ALJ's finding about Ms. Thompson's level of anxiety is not supported by competent evidence.

[¶9] “[O]nce the employer makes a bona fide offer of reasonable employment, the employee is subject to a reciprocal obligation to accept that offer, absent good and reasonable cause for refusal.” *Loud v. Kezar Falls Wollen Co.*, 1999 ME 118, ¶ 6, 735 A.2d 965; *see* 39-A M.R.S.A. § 214(1)(A). “Reasonable employment” means “any work that is within the employee’s capacity to perform that poses no clear and proximate threat to the employee’s health and safety and that is within a reasonable distance from that employee’s residence.” 39-A M.R.S.A. § 214(5). The Law Court has considered and determined that nonwork-related reasons can satisfy the good and reasonable cause requirement in section 214(1)(A). *See Ladd v. Grinnell Corp.*, 1999 ME 76, ¶ 12, 728 A.2d 1275 (holding that hearing officer erred when concluding that refusal to cross picket line during strike could not, as a matter of law, constitute good and reasonable cause); *Thompson v. Claw Island Foods*, 1998 ME 101, ¶ 16, 713 A.2d 316 (holding that relocating away from the employer may constitute good and reasonable cause).

[¶10] However, “[n]ot every personal consideration will constitute good and reasonable cause entitling an employee to continued benefits after a refusal of an offer of reasonable employment.” *Thompson*, 1998 ME 101, ¶ 19, 713 A.2d 316 (quotation marks omitted). Instead, “[i]t is left to the sound discretion of the

factfinder to carefully examine the facts and circumstances of each case to determine what is good and reasonable cause in any given situation.” *Id.*

[¶11] TAMC contends that Ms. Thompson’s testimony about her level of anxiety “as a reason to prevent her from returning to work” is not credible. It characterizes Ms. Thompson as claiming “simply that she has a perception of how others view her” that causes her not to want to be around people. TAMC argues that this does not constitute a good faith basis to reject a job offer.

[¶12] The ALJ wrote:

It was not unreasonable for Ms. Thompson to rely on the recommendations of her mental health treatment providers. The forensic medical examiners in this case, Dr. Kimball, Dr. Herzog and Dr. Mazzei, have all commented upon employee’s psychological state in connection with examining her for the physical symptoms related to the work injury.

[¶13] Ms. Thompson testified that her clinical social worker suggested that she “keep things simple,” not accept the job offer, and see a psychiatrist. The reports of Drs. Kimball, Herzog, and Mazzei all acknowledged Ms. Thompson’s psychological state. Thus, the ALJ’s finding that her anxiety existed at a sufficient level to constitute good and reasonable cause to refuse TAMC’s offer of employment is supported by competent evidence and fell within the bounds of the ALJ’s sound discretion. *See Thompson*, 1998 ME 101, ¶ 19, 713 A.2d 316.¹

¹ TAMC also argues that “the medical evidence to support such a claim of incapacity is lacking in competence.” However, this conflates the analysis of work capacity with the analysis under section

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. 2018).

Pursuant to board Rule, chapter 12, § 19, all evidence and transcripts in this matter may be destroyed by the board 60 days after the expiration of the time for appeal set forth in 39-A M.R.S.A. § 322 unless (1) the board receives written notification that one or both parties wish to have their exhibits returned to them, or (2) a petition for appellate review is filed with the law court. Evidence and transcripts in cases that are appealed to the law court may be destroyed 60 days after the law court denies appellate review or issues an opinion.

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214(1)(A). The ALJ did not err by considering Ms. Thompson's psychological condition as it relates to whether she had good and reasonable cause to refuse the job offer, rather than as a cause of incapacity.