

JONATHAN D. CLAYTON
(Appellee)

v.

STATE OF MAINE, DEPARTMENT OF DEFENSE, VETERANS
& EMERGENCY MANAGEMENT
(Appellant)

Argument held: December 1, 2016
Decided: December 16, 2016

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

[¶1] The State of Maine, Department of Defense, Veterans and Emergency Management, appeals from a decision of a Workers' Compensation Board administrative law judge (*Pelletier, ALJ*) granting Jonathan Clayton's Petition for Award, and awarding ongoing partial incapacity benefits based on an imputed full-time earning capacity for a work-related right hand and wrist injury.

[¶2] The Department argues that Mr. Clayton's decision to attend school full-time without working constituted a decision to remove himself from the workforce. Consequently, the Department argues, Mr. Clayton is disqualified from receiving incapacity benefits during that period. Additionally, the Department argues that the ALJ's determination that Mr. Clayton continues to suffer from

incapacity attributable to the work injury is not supported by competent evidence in the record.

[¶3] We disagree with these contentions. Mr. Clayton's return to school full-time does not disqualify him from an award of partial incapacity benefits, provided that he has shown a decrease in his ability to earn due to the effects of the work injury. *Cf. Tucker v. Assoc'd. Grocers of Me.*, 2008 ME 167, ¶¶ 19-20, 959 A.2d 75 (holding that an injured employee with full-time earning capacity who elects to return to school full-time is not eligible for 100% partial benefits based on a search for only part-time work, and remanding for recalculation of benefits based on an imputed, full-time earning capacity); *Johnson v. Shaw's Distrib. Ctr.*, 2000 ME 191, ¶¶ 12-18, 760 A.2d 1057 (affirming an award of ongoing partial incapacity benefits for an employee enrolled full-time in school pursuant to a vocational rehabilitation plan).

[¶4] There is competent evidence in the record demonstrating that Mr. Clayton remains partially incapacitated as a consequence of the work injury. Mr. Clayton was on work restrictions due to the injury when he was laid off from work at the Department, and Dr. Pruchnick, a hand specialist, recommended that he no longer perform manual labor. We find no error in the ALJ's reliance on this evidence to conclude that Mr. Clayton's ability to earn remained compromised after his lay-off and while attending school. Moreover, the decision 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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