

STEPHEN CAPELLA

v.

CLEAN HARBORS ENVIRONMENTAL SERVICES et al.

Argued: April 8, 2008  
Decided November 13, 2008

Panel: SAUFLEY, C.J., and CLIFFORD, ALEXANDER, LEVY, SILVER,  
MEAD, and GORMAN, JJ.

#### MEMORANDUM OF DECISION

Clean Harbors Environmental Services appeals from a decision of a Workers' Compensation Board hearing officer (*Sprague, HO*) granting Stephen Capella's petition to determine extent of permanent impairment and for restoration, and awarding ongoing total incapacity benefits. The hearing officer determined that Capella suffers 37% whole person permanent impairment as a result of the physical and mental sequelae of his 1998 work injury. Clean Harbors contends that the hearing officer erred (1) by assigning a percentage of permanent impairment to Capella's mental condition, and (2) because there is insufficient evidence that Capella's medical or economic circumstances have changed since a prior Board decree issued in 2004.

Capella was awarded total incapacity benefits. Accordingly, we conclude that the issue regarding percentage of permanent mental impairment is moot because total incapacity benefits are not subject to the durational cap. 39-A M.R.S. § 212(1) (2007); *Legassie v. Securitas, Inc.*, 2008 ME 43, ¶¶ 29-30, 944 A.2d 495, 503 (holding appeal of permanent impairment rating when employee suffers total incapacity is moot). In addition, contrary to Clean Harbors's contention, the record contains sufficient evidence to support the hearing officer's finding of

changed medical circumstances. *See Grubb v. S.D. Warren Co.*, 2003 ME 139, ¶ 7, 837 A.2d 117, 119-20 (holding that a party seeking to change an existing benefit award must demonstrate a change in the employee's medical or economic circumstances).

The entry is:

The appeal is dismissed as moot in part. The decision of the Workers' Compensation Board hearing officer is otherwise affirmed.

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and ESIS:**

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