

MELANIE LEWIS

v.

SAD 61 et al.

Argued September 11, 2007
Decided November 13, 2008

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

MEMORANDUM OF DECISION

School Administrative District No. 61 (SAD 61) appeals from a decision of a Workers' Compensation Board hearing officer (*Jerome, HO*) denying its petition for review, awarding ongoing total incapacity benefits, and assigning a whole person permanent impairment rating of 12% to Melanie Lewis for a 1999 work injury to her left foot. SAD 61 contends that the hearing officer erred by (1) assigning a percentage of impairment to Lewis's mental stress symptoms; (2) failing to conclude that Lewis forfeited her benefits pursuant to 39-A M.R.S. § 214(1)(A) (2007) by unreasonably refusing a bona fide offer of employment; and (3) failing to reduce Lewis's benefit by the amount attributable to back pain pursuant to 39-A M.R.S. § 201(5) (2007), applicable to subsequent nonwork injuries.

Lewis was awarded total incapacity benefits. Accordingly, we conclude that (1) the issue regarding percentage of permanent impairment is moot because Lewis's 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), and (2) section 214(1)(A), which has application only to employees with partial incapacity, does not apply, *Flickinger v. Oakhurst Dairy*, 2006 ME 69, ¶ 7, 899 A.2d 784, 786 (stating “provisions [of section 214] apply only when the employee has partial work capacity after an injury”). Finally, the factual finding that Lewis’s back symptoms result from an aggravated pre-existing condition has support in the record, and we decline to disturb it. *See* 39-A M.R.S. § 318 (2007) (“The hearing officer’s decision, in the absence of fraud, on all questions of fact is final[.]”).

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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