

MICHAEL McLAUGHLIN  
(Appellee)

v.

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

Argued: November 30, 2016  
Decided: December 21, 2016

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

[¶1] The State of Maine, Department of Defense, Veterans and Emergency Management, appeals from a Workers' Compensation Board administrative law judge's (*Pelletier, ALJ*) decision granting Michael McLaughlin's Petitions for Restoration and for Payment of Medical and Related Services, and awarding ongoing partial incapacity benefits based on an imputed full-time earning capacity for a 2006, work-related low-back injury.

[¶2] In a 2010 decree, the ALJ established the 2006 injury as compensable and awarded Mr. McLaughlin a closed-end period of workers' compensation benefits. Mr. McLaughlin continued to experience restrictions, but was able to return to work at the Department in an accommodated position until he was laid off on October 31, 2013, due to an economic downturn.

[¶3] The Department asserts that the ALJ erred when determining that Mr. McLaughlin's layoff constituted a change of circumstances sufficient to overcome the res judicata effect of the 2010 decree, because he had been out of work at the time due to a non-work related condition and he subsequently returned to school full-time. The Department further contends that Mr. McLaughlin failed to demonstrate earning incapacity caused by the 2006 work injury as opposed to general economic conditions.

[¶4] We disagree with these contentions. First, Mr. McLaughlin's October 2013 layoff from his accommodated position constitutes a change in circumstances sufficient to re-examine his benefit status, *see Grubb v. S.D. Warren Co.*, 2003 ME 139, ¶ 7, 837 A.2d 117, despite the fact that he was out of work for a subsequent nonwork-related condition at the time, *see Roy v. Bath Iron Works*, 2008 ME 94, ¶ 11, 952 A.2d 965 (holding that 39-A M.R.S.A. § 201(5) requires that the effects of a subsequent nonwork-related injury be separated out so that they do not affect the amount or duration of benefits awarded for a prior work-related injury). Moreover, Mr. McLaughlin'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 the 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).

[¶5] Second, Mr. McLaughlin demonstrated that his ongoing earning incapacity is related to his 2006 work injury with medical evidence showing that he continues to experience restrictions as a result of that injury. Further, evidence submitted by the Department demonstrates his diminished earning potential in the labor market. *See Mailman v. Colonial Acres Nursing Home*, 420 A.2d 217, 220 (Me. 1980).

[¶6] The ALJ neither misconceived nor misapplied the law, and the factual findings are supported by competent evidence. *See Pomerleau v. United Parcel Serv.*, 464 A.2d 206, 209 (Me. 1983). The award of partial incapacity benefits is affirmed, subject to applicable statutory offsets.

The entry is:

The administrative law judge's decision is affirmed.

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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. 2016).

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