

DEXTER PERRY
(Appellant)

v.

MEADWESTVACO
(Appellee)

and

MSIGA

and

NEWPAGE PAPER
(Appellee)

and

SEDGWICK

Argued: July 20, 2017
Decided: September 13, 2017

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

[¶1] Dexter Perry appeals from a Workers' Compensation Board administrative law judge's (*Goodnough, ALJ*) decision denying his Petitions for Restoration. The ALJ denied Mr. Perry incapacity benefits by applying the retirement presumption in 39-A M.R.S.A. § 223 (2001), which Mr. Perry did not rebut.

[¶2] The ALJ’s application of the retirement presumption was not erroneous. Although he was not performing the same duties of the job he held at the time of his original work injury, Mr. Perry performed the customary duties of his job in the mill’s traffic annex—albeit with work restrictions—for about eight years until the time of his retirement. *See Bowie v. Delta Airlines, Inc.*, 661 A.2d 1128, 1131 (Me. 1995). That work, contrary to Mr. Perry’s contentions, constitutes “active employment” for purposes of the retirement presumption. 39-A M.R.S.A. § 223; *Bowie*, 661 A.2d at 1131.

[¶3] Moreover, Mr. Perry did not prove that he had been working under duress, *see Hallock v. Newpage Corp.*, Me. W.C.B. No. 16-6, ¶ 23 (App. Div. 2016), or that he was unable to perform work suitable to his qualifications, *see* 39-A M.R.S.A. § 223(1).

[¶4] There is competent evidence to support the ALJ’s factual findings, and the ALJ applied the appropriate legal standards to those facts. *See Moore v. Pratt & Whitney Aircraft*, 669 A.2d 156, 158 (Me. 1995).

The entry is:

The ALJ’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. 2016).

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