CLARINDA M. TREMBLAY
(Appellant)

v.

L.L. BEAN
(Appellee)

and

MEMIC
(Insurer)

Conference held: March 19, 2014
Decided: February 18, 2015

PANEL MEMBERS: Hearing Officers Jerome, Goodnough, and Stovall
BY: Hearing Officer Stovall

[¶1] Clarinda Tremblay appeals from a decision of a Workers' Compensation Board hearing officer (*Knopf, HO*) granting her Petitions for Award in part. The hearing officer determined that Ms. Tremblay is entitled to the protection of the Workers' Compensation Act for June 1, 1996, and September 18, 2003, bilateral Achilles tendon injuries, but did not award her ongoing partial incapacity benefits because she determined that Ms. Tremblay had refused a bona fide offer of reasonable employment without good and reasonable cause. *See* 39-A M.R.S.A. § 214(1)(A) (Supp. 2014). We affirm the hearing officer's decision.

I. BACKGROUND

[¶2] Ms. Tremblay worked for L.L. Bean in a variety of positions from 1988 until 2009. On June 1, 1996, while working in the quality assurance department, she injured her left Achilles tendon. Months later, she began experiencing pain in her right Achilles tendon as well. She attributed the injury to walking on cement floors all day and using the stairs multiple times every day. Eventually, she treated with an orthopedist and was given a walking cast, which she wore for approximately six weeks. Nevertheless, Ms. Tremblay was able to continue to work because L.L. Bean accommodated her by allowing her to spend less time on her feet.

[¶3] In July of 2000, Ms. Tremblay's job in quality assurance was eliminated and she was assigned to a new position as an inspector, which required her to be on her feet more often. She experienced intermittent foot and leg problems but sought treatment infrequently.

[¶4] In May of 2003, L.L. Bean changed Ms. Tremblay's job to a position that required her to stand at a work station during her entire shift. Shortly thereafter, Ms. Tremblay reported that her work was causing her bilateral Achilles tendon problems. She was referred to a podiatrist who recommended surgery for both Achilles tendons, and restricted Ms. Tremblay to sit-down work only and

a three-day work week. Ms. Tremblay began working three days per week but she was not able to remain seated at all times.

[¶5] In June of 2004, Ms. Tremblay underwent surgery on her right Achilles tendon. She returned to work the following September in L.L. Bean's transitional work program, working four hours per day. During this period she was assigned to various jobs, some of which required duties that were within her restrictions and some did not. In 2005, she tried to return to her former job in the quality assurance department, but it required too much standing and walking.

[¶6] In 2008, she was assigned to a position as an administrative assistant in human resources. That job was within her restrictions, but was eliminated after approximately one year. Her final assignment at L.L. Bean was in the first aid department, but she worked there for only three days. She accepted a severance package and left L.L. Bean on May 21, 2009.

[¶7] Ms. Tremblay filed two Petitions for Award, claiming that she suffered work-related injuries to her Achilles tendons in 1996 and 2003. L.L. Bean asserted that Ms. Tremblay is not entitled to incapacity benefits because she refused a bona fide offer of reasonable employment when she left the first aid position. *See* 39-A M.R.S.A. § 214(1)(A) .

[¶8] At the hearing, Ms. Tremblay testified that she left that final job placement because the job duties were too physically demanding and she lacked

the necessary medical background and training. However, her supervisor testified that Ms. Tremblay did not mention any physical problems in performing the job duties at that time. Ms. Tremblay told her she was leaving because she lacked adequate experience and knowledge in the field, and felt overwhelmed, even though the supervisor offered to provide her with training. The supervisor's contemporaneous notes of the conversation supported this testimony.

[¶9] The hearing officer awarded Ms. Tremblay the protection of the Act for the 1996 and 2003 injuries, but did not award incapacity benefits beyond May of 2009 because she determined that Ms. Tremblay had resigned from suitable employment without good and reasonable cause. Ms. Tremblay filed a motion for additional findings of fact and conclusions of law, which the hearing officer denied. Ms. Tremblay filed this appeal.

II. DISCUSSION

A. Standard of Review

[¶10] Appeals from hearing officer decisions are governed by 39-A M.R.S.A. §§ 321-B (Supp. 2014). Section 321-B(2) provides that "[a] finding of fact by a hearing officer is not subject to appeal under this section." The role of the Appellate Division, therefore, "is limited to assuring that the [hearing officer's] findings are supported by competent evidence, that [the] decision involved no misconception of applicable law and that 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) (quotation marks omitted).

B. Refusal of Bona Fide Offer of Reasonable Employment

[¶11] Ms. Tremblay contends that the hearing officer erred when determining that she is not entitled to wage loss benefits because she left her final job at L.L. Bean without good and reasonable cause. Title 39-A M.R.S.A. § 214(1)(A) provides, in relevant part:

> If an employee receives a bona fide offer of reasonable employment from the previous employer . . . and the employee refuses that employment without good and reasonable cause, the employee is considered to have voluntarily withdrawn from the work force and is no longer entitled to any wage loss benefits under this Act during the period of the refusal.

[¶12] When applying section 214, the hearing officer "is required to undertake a two-part analysis, reviewing both the employer's actions in making the job offer and the employee's actions in declining that offer." *Thompson v. Claw Island Foods, Inc.*, 1998 ME 101, ¶ 7, 713 A.2d 316. When evaluating an employee's decision to decline a job offer, the hearing officer must determine first whether the offer was a "bona fide offer of reasonable employment." *Id*. The factors to consider include "whether the work falls within the employee's work capacity, whether it poses a threat to the employee's health and safety, and whether it is within a reasonable distance of the employee's residence." *Id*. ¶ 8. Second, the hearing office must determine whether the employee refused that offer without

"good and reasonable cause" by the considering the "facts relevant to the employee's decision to decline the job offer." *Id*. ¶ 16.

[¶13] The reasonableness of the refusal is a broad inquiry; the hearing officer "must consider all facts relevant to the employee's decision to decline the job offer." *Id*.; *see also Ladd v. Grinnell Corp.*, 1999 ME 76, ¶ 7, 728 A.2d 1275. Voluntarily leaving suitable post-injury employment without good and reasonable cause may constitute a refusal under section 214(1)(A). *Holt v. Sch. Admin. Dist. No. 6*, 2001 ME 146, ¶¶ 7-8, 782 A.2d 799.

[¶14] Ms. Tremblay asserts that the hearing officer's determination that she refused suitable employment without good and reasonable cause was arbitrary and made without a rational foundation. She contends that because she accepted four to five different assignments over five years in an attempt to accommodate her injuries, it was reasonable as a matter of law for her to leave L.L. Bean because there was no suitable work available. *Citing Ladd*, 1999 ME 76, 728 A.2d 1275 (holding that the hearing officer erred when concluding that the refusal to cross a picket line during a strike could not, as a matter of law, constitute good and reasonable cause to refuse employment offer).

[¶15] We find Ms. Tremblay's argument unpersuasive. The hearing officer determined that "Ms. Tremblay has disqualified herself from receiving benefits because she left suitable work without good or reasonable cause[,]" reasoning that:

> The contemporaneous medical records and Ms. White's description of Ms. Tremblay's duties suggest that her work in first aid fell within her restrictions. She was not removed from work by a doctor and she told Ms. White she was leaving because she lacked training, felt overwhelmed, without mention of her foot problem. In fact, she applied for very similar jobs shortly after leaving L.L. Bean. The board does not doubt that Ms. Tremblay was overwhelmed and frustrated at first aid, but legally her case is substantially similar to *Holt v. S.A.D* #6, 2001 ME 146, 782 A.2d 779, in which the Law Court found that Ms. Holt had constructively refused an offer of suitable work under 39-A M.R.S.A §214(1)(A) when she voluntarily left suitable post-injury employment without good and reasonable cause. The board makes the same finding here. As such, Ms. Tremblay is not entitled to incapacity benefits for the period of refusal.

[¶16] Because both L.L. Bean and Ms. Tremblay honored their obligations under the Act, Ms. Tremblay was able to remain gainfully employed for several years beyond her second injury. While the record indicates that at times the attempts at accommodation did not go well in light of Ms. Tremblay's physical limitations and the requirements of particular jobs, the hearing officer found, based on competent evidence, that the job Ms. Tremblay voluntarily quit was a suitable job within her restrictions (and thus a bona fide offer of reasonable employment), and that Ms. Tremblay failed to establish good or reasonable cause for refusing to continue in that job. *See Holt,* 2001 ME 146, ¶¶ 7-8, 782 A.2d 779. Further, the hearing officer found the testimony of Ms. Tremblay's supervisor, indicating that Ms. Tremblay did not complain about the physical requirements of the job, to be credible.

III. CONCLUSION

[¶17] A review of the record in this case demonstrates that the hearing officer based her decision on competent evidence, and that she neither misconceived nor misapplied the law when awarding Ms. Tremblay the protection of the Act, but denying her claim for ongoing incapacity benefits.

The entry is:

The hearing officer'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. 2014).

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