

STATE OF MAINE  
**WORKERS' COMPENSATION BOARD**

ISSUED: December 20, 2004  
DECISION NO.: WCB-213-04-02

Gudrun U.H. Warren  
Worker Advocate  
WORKERS' COMPENSATION BOARD  
62 Elm St  
Portland ME 04101

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Mail Date:  
WCB File No.: 97-005987                      DOI: 05/30/1997

\* \* \* \* \*

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 20 days of receipt of this decision, and by filing a petition seeking appellate review with the Law Court within 20 days thereafter. See 39-A M.R.S.A. Section 322.

Pursuant to Board Rule Chapter 12 Section 19, all evidence and transcripts in this matter may be destroyed after 60 days unless (1) we receive written notification that one or both parties wish to have their exhibits returned to them, or (2) a petition for appellate review is filed. The 60 days will not begin to run until all post-decree motions have been decided or otherwise disposed.

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DARRELL F. STEWART  
(Employee)

v.

SKYPIG, INC., Co.  
(Employer)

and

MAINE EMPLOYERS' MUTUAL INSURANCE COMPANY  
(Insurer)

BEFORE: DIONNE, COONEY, HILTZ, KOOCHER, AND MONFILETTO, DIRECTORS

Pending before the Board is a Petition for Extension of Benefits Pursuant to 39-A M.R.S.A. § 213(1) filed by the employee and dated July 2, 2004, concerning a May 30, 1997 date of injury.

Mr. Stewart has received 364 weeks of incapacity benefits. He is seeking an extension of his entitlement to incapacity benefits because of extreme financial hardship due to inability to return to gainful employment, pursuant to 39-A M.R.S.A. § 213(1). Evidentiary hearings were held on December 8 and 16, 2004.

As evidence, the Board considered the testimony of Mr. Darrell Stewart taken on December 8 and 16, 2004; Mrs. Gloria Stewart and Betty Ulmer on December 8, 2004; and Anthony Orlando on December 16, 2004; Employee Exhibits #1-12; and Employer's Exhibits #1-13.

#### DECISION AND ORDER

1. The employee has received more than 364 weeks of lost time benefits due to incapacity that resulted from an injury that he suffered while employed by SkyPig, Inc., Co. on May 30, 1997.
2. Mr. Stewart's monthly expenses exceed his monthly income. He and his wife receive Social Security benefits and have no other household income.
3. Pursuant to a Certificate of Discontinuance and letter to the employee dated June 15, 2004, Mr. Stewart's incapacity benefits were suspended effective July 7, 2004.
4. Mr. Stewart is experiencing extreme financial hardship.
5. A Board Hearing Officer currently has petitions pending which may determine the extent of ongoing incapacity due to the injury. The evidence has closed and those petitions are ready for decision. Therefore, the issue of the extent of Mr. Stewart's ongoing incapacity due to the work injury is left to the Hearing Officer to decide. That decision will determine whether Mr. Stewart's extreme financial hardship is "due to inability to return to gainful employment," entitling him to an extension of the duration of benefit entitlement pursuant to 39-A M.R.S.A. § 213(1).

WHEREFORE, on a vote of 5-0, the Board finds that Mr. Stewart is suffering extreme financial hardship.

Voting YES: Directors Dionne, Cooney, Hiltz, Koocher and Monfiletto

On a vote of 4-0-1, the Board defers to the Hearing Officer the issue of the extent of Mr. Stewart's ongoing incapacity due to the work injury.

Voting YES: Directors Dionne, Cooney, Hiltz, and Monfiletto.

Voting NO: None.

Abstentions: Director Koocher.

SO ORDERED.

WORKERS' COMPENSATION BOARD

\_\_\_\_\_  
Date

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Paul R. Dionne, Chair

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Date

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John C. Cooney, Director

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Date

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Rodney Hiltz, Director

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Date

\_\_\_\_\_  
Gary Koocher, Director

\_\_\_\_\_  
Date

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Anthony Monfiletto, Director