WC Appellate Division Decision issued on December 29, 2017 – Challenge to Section 201(3) Rejected

In its final decision of 2017 an *en banc* panel of the Appellate Division consisting of seven ALJs unanimously denied an appeal brought by an employee in a case in which a claim of a gradual mental injury had been denied. In *Henderson v. Town of Winslow*, Me. W.C.B. No. 17-46 (App. Div. 2017), the claimant had a pre-existing emotional condition resulting from an occupational event which was barred by the statute of limitations, but asserted a new gradual emotional injury related to interpersonal events at work. The ALJ denied the gradual stress injury claim on the grounds that the employee failed to meet the demanding burden of proof under Section 201(3). Following the close of the evidence in the underlying litigation, the employee argued for the first time in her position paper that applying Section 201(3) would violate the equal protection clauses of both the United States and Maine Constitutions, and would also violate the Americans with Disabilities Act. The argument was made in a brief portion of an otherwise lengthy position paper and was asserted without substantial legal analysis and supporting authority. In denying the Petition for Award the ALJ did not comment upon the issues which were raised for the first time following the close of the evidence. The employee filed a Motion for Findings of Fact, but in her proposed findings she did not raise either the constitutional or the ADA issues. Similarly, when the employee appealed to the Appellate Division she did not cite these arguments as among the issues to be addressed on appeal. Ultimately the employee argued before the Appellate Division that the ALJ committed reversible error in failing to address or act upon the alleged constitutional issues in the application of Section 201(3). In denying the employee's appeal the Appellate Division observed that long-established legal procedure prevents a party from raising issues for the first time on appeal, even though they may arguably be of constitutional significance. In effect, the Division ruled that the employee had waived her arguments by failing to raise them in a timely fashion and by doing so only in a brief and insubstantial manner without focused and developed legal argumentation.

Therefore, we conclude that Ms. Henderson forfeited consideration of her equal protection and ADA arguments both by raising them belatedly, doing so in a perfunctory manner, as well as by failing to seek additional findings or conclusions regarding them.

Accordingly, the Division did not address the merits (or lack thereof) of the employee's constitutional objections to Section 201(3). The Division also rejected the employee's argument that the burden of proof by clear and convincing evidence required by Section 201(3) should not be applied when a pre-existing condition is present. The Division found that Section 201(3) applies equally to new stress injuries as well as to those which may be an aggravation or exacerbation of a prior condition. Therefore, apart from any arguable constitutional issues, the Appellate Division upheld the clear and convincing evidence standard mandated by Section 201(3) for all types of gradual emotional injuries. Steve Moriarty represented the employer in litigation before the Board and on appeal.

©2026 Norman Hanson DeTroy LLC All Rights Reserved