WC Appellate Division Decision issued on May 31, 2017 – Voc Rehab Plan

In *Richards v. D.P. Industries, Inc*., Me. W.C.B. No. 17-24 (App. Div. 2017), the employee sustained a compensable injury in 2001 which resulted in significant continuing work restrictions. Ultimately a vocational rehabilitation plan was prepared by a representative of the Department of Labor's Division of Rehabilitation Services in November 2014. The employer did not agree to pay for the cost of the plan, which were in the amount of $8,918.00. As a result, the employee filed a Petition to Determine Entitlement to Rehabilitation Services pursuant to §217(2) seeking payment of that amount. However, in testimony before the Hearing Officer (the Petition was assigned to Hearing Officer Richard Dunn rather than an ALJ) the employee stated that his actual expenses were $15,000.00 and submitted documentary evidence in support. The Hearing Officer granted the Petition but only to the extent of the requested amount of $8,918.00. The employee filed a Motion for Findings and a Motion to Reopen the Evidence. The Hearing Officer affirmed his initial decision and declined to re-open the matter. The Appellate Division affirmed every aspect of the Hearing Officer's decision. Noting that the employee had requested payment of $8,918.00 in his Petition, which was the estimated cost of the voc rehab plan at the time of filing, the Division found no error in awarding the employee exactly what had been claimed. The Division also approved the denial of the employee's Motion to Reopen the Evidence. Section 319 allows the Board to reopen the evidence in a proceeding "on the grounds of newly discovered evidence that by due diligence could not have been discovered prior to the time the payment scheme was initiated or prior to the hearing on which the award or decree was based". The panel observed that the employee might have filed his Petition to Determine Entitlement to Rehabilitation Services too soon, as the total cost of the plan had apparently not yet crystalized prior to the time of filing. Nevertheless, the statutory requirements of §319 had not been met, and the possible premature filing of the underlying Petition was not a basis to reopen the evidence. Steve Hessert represented the employer at hearing and before the Division.

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