

DENNIS ALMEIDA, JR.
(Appellant)

v.

CARPET TOWN
(Appellee)

and

MEMIC
(Insurer)

Argued: November 20, 2013
Decided: December 11, 2013

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

[¶1] Dennis Almeida, Jr., appeals from a decision of a Workers' Compensation Board hearing officer (*Jerome, HO*) granting his Petition for Award in part. The hearing officer determined that Mr. Almeida is entitled to the protection of the Workers' Compensation Act for a November 8, 2004 work injury to his low back, but because the effects of that injury ended by August 31, 2005, he is not entitled to an award of ongoing incapacity benefits.¹ Mr. Almeida contends

¹ Mr. Almeida requested the opportunity to present oral argument pursuant to Me. W.C.B. Rule, ch. 13, § 9(1). That request was granted and argument was scheduled for November 20, 2013. On November 19, 2013, Mr. Almeida filed a request that oral argument be postponed. That request was denied. Mr. Almeida did not appear, but the appellee did appear and presented brief argument.

that the hearing officer erred by failing to find that the 2004 work injury is the cause of his current earnings incapacity.² We affirm the hearing officer's decision.

[¶2] Mr. Almeida went to work for Carpet Town in 2000, and worked there sporadically until September 2005. In 1988, he suffered three herniated discs while moving a piano for a previous employer, and he has had chronic low-back problems ever since. On November 8, 2004, he aggravated this pre-existing back condition while lifting boxes for Carpet Town. As result of that injury, Carpet Town paid Mr. Almeida workers' compensation benefits from November 14, 2004, through April 25, 2005. Mr. Almeida returned to work at Carpet Town in April 2005, but left in September 2005.

[¶3] Mr. Almeida filed a Petition for Award. He contended that he never returned to gainful employment after September 2005 due to the effects of the 2004 low back injury and related depression. The hearing officer granted the petition in part, awarding Mr. Almeida the protection of the Act for the 2004 injury, but not awarding incapacity benefits. Mr. Almeida appeals that decision. He argues that evidence compels the conclusion that his current earning incapacity results from the 2004 work injury. We disagree.

² Mr. Almeida also alludes to a claim that he has a right to assistance by the Workers' Compensation Board advocate program. However, he raises the argument in his brief in only a summary manner, and does not explain or develop it. It is therefore waived. *See Mehlhorn v. Derby*, 2006 ME 110, ¶ 11, 905 A.2d 290 (“[I]ssues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived.” (quotation marks omitted)). In any event, the advocate program has the authority to decline to represent employees in certain cases, including when, as here, there is no medical evidence of causation. *See* 39-A M.R.S.A. § 153-A(6)(B)(5) (Supp. 2012).

[¶4] Appeals from hearing officer decisions are governed by 39-A M.R.S.A. § 321-B (Supp. 2012) (amended by P.L. 2013, ch. 63, §§ 13-14 (effective October 9, 2013)), and 39-A M.R.S.A. § 322 (Supp. 2012). 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).

[¶5] After hearing Mr. Almeida’s testimony and considering the evidence presented at the hearing, the hearing officer concluded that Mr. Almeida’s work history had been intermittent and sporadic since the late 1980s, well before his 2004 work injury at Carpet Town.

[¶6] Further, based on the medical evidence (particularly Dr. Upham’s treatment records), the hearing officer found that although Mr. Almeida was injured at work in 2004, the effects of the injury were short-lived and his back condition returned to baseline as of August 2005. She also noted that the evidence showed multiple reasons for Mr. Almeida’s back pain other than the 2004 injury, including the pre-existing low back condition caused by the 1988 work injury, and

an aggravation of that condition resulting from a significant motor vehicle accident in 2008.

[¶7] Based on evidence of his medical condition and work history, the hearing officer determined that Mr. Almeida had failed to establish a causal connection between the 2004 work injury and both his current incapacity and his lack of employment and earnings incapacity since 2005.

[¶8] 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 denying Mr. Almeida's claim for ongoing incapacity benefits.

CONCLUSION

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. 2012).

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