

GIL MORNEAULT
(Appellant)

v.

KATAHDIN PAPER COMPANY
(Appellee)

and

SEDGWICK CLAIMS MANAGEMENT SERVICES
(Insurer)

Conference held: May 22, 2014
Decided: July 30, 2014

PANEL MEMBERS: Hearing Officers Pelletier, Elwin, and Knopf
BY: Hearing Officer Knopf

[¶1] Gil Morneault appeals from a decision of a Workers' Compensation Board hearing officer (*Greene, HO*) granting his Petition for Review and awarding ongoing partial incapacity benefits at a fixed rate of \$424.44 from February 10, 2012. On appeal, Mr. Morneault contends that the hearing officer erred by failing to issue findings of fact sufficient to provide an adequate foundation for appellate review on the issue of the extent of his post-injury earning capacity. In addition, Mr. Morneault maintains that the record lacks evidence to support the hearing officer's finding that he has the ability to earn \$337.00 a week. We affirm the hearing officer's decision.

[¶2] Mr. Morneault filed a motion for findings of fact and conclusions of law, which the hearing officer denied. He asserts that the hearing officer was required to

determine his entitlement to ongoing partial benefits¹ based on a specific finding of “how many hours a week [he] can work or the rate of pay that he is cable of earning.” He contends that absent such findings, the hearing officer’s further finding that he has the capacity to earn \$337.00 per week has no support in the record.

[¶3] Post-injury earning capacity is based on both “(1) the employee’s physical capacity to earn wages and (2) the availability of work within the employee’s physical limitations.” *Dumond v. Aroostook Van Lines*, 670 A.2d 939, 941 (Me. 1996). Hearing officers, however, are not required to follow any mathematical formula when evaluating an employee’s earning capacity. Rather, hearing officers may consider a number of relevant factors to arrive at a figure that accurately reflects the employee’s ability to earn wages. *See, e.g. Thew v. Saunders of Locke Mills, LLC*, Me. M.C.B. No. 13-4, ¶¶ 10-11 (App. Div. 2013); *see also Hogan v. Great No. Paper, Inc.*, 2001 ME 162, ¶ 9, 784 A.2d 1083 (“In all cases involving partial incapacity, including those in which there is no specific job offer or when the employee has failed to conduct a work search, the obligation of the hearing officer is to determine what the employee is ‘able to earn.’”).

[¶4] Here, the hearing officer found that Mr. Morneault had “at least light work capacity on a regular and reliable basis,” and identified a number of factors he considered in determining the employee’s post-injury ability to earn, including

¹ Partial incapacity benefits are calculated generally as a percentage “of the difference between the injured employee’s after-tax average weekly wage before the personal injury and the after-tax average weekly wage that the injured employee is able to earn after the injury[.]” *See* 39-A M.R.S.A. § 213 (Supp. 2013).

(1) that Mr. Morneault, due to his ongoing low back pain, could not return to his previous employment working in the grinding room for Katahdin Paper; (2) Dr. Dunstan's opinion that Mr. Morneault has a "mainly sedentary" and possibly light work capacity that included a lifting limit of 20 pounds occasionally and 10 pounds frequently"; (3) that Dr. Kimball had assessed Mr. Morneault one year earlier as having "a medium work capacity, including lifting and carrying up to 40 pounds" and that he was "able to walk, sit, stand, [and] complete an eight to twelve hour work day"; (4) Mr. Morneault's testimony regarding his activities since leaving work on March 4, 2011, as well as notations in the medical records; (5) Mr. Morneault's intrinsic limitations, including his age (57) and level of deconditioning, particularly after having been out of work for sixteen months at the time of his testimony; and (6) Mr. Morneault's limited work experience, which was mainly in low-skilled, labor intensive jobs.

[¶5] The hearing officer also took into account that Mr. Morneault still has his commercial driver's license but inferred he would be limited to short-haul trips. Lastly, he noted that Mr. Morneault presented no evidence of a work search or any other evidence of the availability of work within his limitations.

[¶6] Based on these factors, the hearing officer found that Mr. Morneault "has a partial capacity for remunerative work," and specifically, that he was capable of earning \$337.00 per week, which equates to approximately one-third of his pre-injury

average weekly wage of \$1,018.53, and is slightly over what he could earn working full-time at minimum wage. We find no error in this approach, and conclude that there is competent evidence in the record to support the hearing officer's finding regarding earning capacity, and that the hearing officer's findings are adequate for appellate review. *See See Chapel Road Assocs., L.L.C. v. Town of Wells*, 2001 ME 178, ¶ 10, 787 A.2d 137 (stating that adequate findings include those that allow a reviewing body effectively to determine the basis of the agency's decision; that is, whether the decision is supported by the evidence).

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. 2013).

Attorney for Appellant/Employee:
G. Bradley Snow, Esq.
TANOUS, SNOW & LUFKIN
P.O. Box 246
East Millinocket, ME 04430

Attorneys for Appellee/Employer:
Debra A. Reece, Esq.
Virginia K. Putnam, Esq.
RUDMAN WINCHELL
P.O. Box 1401
Bangor, ME 04402-1401