MELANIE J. KNAUT
(Appellant)

v.

LYNCO, INC.
(Appellee)

and

MEMIC
(Insurer)

Argued: November 20, 2013
Decided: January 31, 2014

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

[¶1] Melanie Knaut appeals from a decision of a Workers' Compensation Board hearing officer (*Elwin, HO*) granting her Petition for Award in part. The hearing officer determined that Ms. Knaut is entitled to the protection of the Workers' Compensation Act for an April 13, 2010, work injury to her right shoulder, but did not award her ongoing partial incapacity benefits because she determined that Ms. Knaut had refused a bona fide offer of reasonable employment without good and reasonable cause. *See* 39-A M.R.S.A. § 214(1)(A) (Supp. 2013). We affirm the hearing officer's decision.

## I. BACKGROUND

[¶2] Ms. Knaut went to work for Lynco, Inc., d/b/a Central Maine Transport (Lynco) in 2009, as a long-haul truck driver. In April 2010, Ms. Knaut injured her right shoulder while dropping off a trailer in Waterville. When attempting to disconnect the "pigtail"—the coiled electrical cord between the tractor cab and the trailer—the coil abruptly released causing her right arm to snap to the ground. She immediately experienced pain and heard a popping sound in her right shoulder. Ms. Knaut sought medical treatment. Her doctor allowed her to return to work, but imposed restrictions that included no driving and light-duty work. Lynco provided Ms. Knaut with clerical work within these restrictions at its warehouse office in Bangor.

[¶3] Ms. Knaut subsequently underwent an MRI that showed a rotator cuff tear, which she had surgically repaired on June 8, 2010. After a period of recuperation, Ms. Knaut's doctor released her to work with restrictions. Lynco offered her a light-duty audit project at its office in Bangor that was within her medical restrictions, but far from her Farmington home. After Lynco agreed to Ms. Knaut's request to work a four-day week so that she could return home on the weekend, Ms. Knaut returned to work. She completed the audit project in October 2010. Lynco then offered Ms. Knaut another light-duty clerical position sorting files at its Hampden warehouse.

[¶4] Ms. Knaut found the working conditions in the Hampden warehouse isolating and depressing, but she nevertheless worked there for four months. After her doctor gave her permission to return to truck driving with continued restrictions against lifting more than 30-35 pounds, she asked Lynco if she could resume her old job. Lynco did not accommodate her request because it has a 75-pound lifting requirement for its drivers. On January 11, 2011, Ms. Knaut left the job at the Hampden facility and did not return.

[¶5] On March 24, 2011, Lynco offered Ms. Knaut another full-time position at its Auburn facility, which was closer to her home in Farmington. Ms. Knaut's doctor approved of this modified light-duty position entailing a combination of clerical duties, housekeeping, and general maintenance tasks. Ms. Knaut, believing this job offer was a "make work" position and viewing it as requiring too much repetitive motion, did not respond to Lynco's offer. Lynco later filled the position.

[¶6] Thereafter, Ms. Knaut did not actively seek employment. She applied for vocational rehabilitation services through the State of Maine, but not through the Workers' Compensation Board. *See* 39-A M.R.S.A. § 217 (Supp. 2013).

[¶7] Ms. Knaut received partial wage loss benefits from the time of her surgery in June 2010, until leaving the Hampden clerical position in January 2011. She then received full incapacity benefits until April 1, 2012, when Lynco reduced

her benefits to partial pursuant to 39-A M.R.S.A. § 205(9)(B)(1) (Supp. 2013), based on a $400.00 per week imputed earning capacity.

[¶8] Ms. Knaut filed a Petition for Award seeking to increase her level of benefits to 100% partial. The hearing officer granted the petition in part, awarding Ms. Knaut the protection of the Act for the 2010 shoulder injury, but awarding no ongoing incapacity benefits because she found that Ms. Knaut had refused a bona fide offer of reasonable employment. *See* 39-A M.R.S.A. § 214(1). Alternatively, the hearing officer determined that Ms. Knaut would not be eligible for 100% partial benefits because she had not submitted any evidence that work was unavailable to her as a result of her work injury, including any evidence of a work search; nor had she participated in a board-ordered vocational rehabilitation plan. The hearing officer further concluded that Ms. Knaut had an earning capacity of $400.00 per week. Ms. Knaut appeals the decision.

## II. DISCUSSION

### A. Standard of Review

[¶9] Appeals from hearing officer decisions are governed by 39-A M.R.S.A. §§ 321-B, 322 (Supp. 2013). 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).

B. Bona Fide Offer of Reasonable Employment

[¶10] Title 39-A M.R.S.A. § 214(1)(A) provides, in relevant part:

> If an employee receives a bona fide offer of reasonable employment from the previous employer. . . and the employee refuses that employment without good and reasonable cause, the employee is considered to have voluntarily withdrawn from the work force and is no longer entitled to any wage loss benefits under this Act during the period of the refusal.

[¶11] When applying section 214, the hearing officer "is required to undertake a two-part analysis, reviewing both the employer's actions in making the job offer and the employee's actions in declining that offer." *Thompson v. Claw Island Foods*, 1998 ME 101, ¶ 7, 713 A.2d 316. When evaluating an employee's decision to decline a job offer, the hearing officer must determine first whether the offer was a "bona fide offer of reasonable employment." *Id*. The factors to consider are "whether the work falls within the employee's work capacity, whether it poses a threat to the employee's health and safety, and whether it is within a reasonable distance of the employee's residence." *Id*. ¶ 8. Second, the hearing officer must determine whether the employee refused that offer without "good and reasonable cause" by the considering the "facts relevant to the employee's decision to decline the job offer." *Id*. ¶ 16.

[¶12] The hearing officer here found that after Ms. Knaut's work-related injury, Lynco offered her a number of reasonable modified light-duty positions, and accommodated her request to work only four days per week so that she could spend time at her home in Farmington. Further, after Ms. Knaut left the clerical position in Hampden, Lynco offered her employment at its Auburn facility, which was a reasonable distance from her home in Farmington and approved by her doctor as within her medical restrictions. The hearing officer did not err when concluding that Lynco's offer was a bona fide offer of reasonable employment.

[¶13] Ms. Knaut testified that she declined the job offer because she thought that the job was "make work" and involved too much repetitive motion. The hearing officer expressly found Ms. Knaut's testimony unpersuasive. The full-time clerical and maintenance position at Lynco's Auburn facility involved file purging, which Ms. Knaut had done in the past without difficulty, sweeping, dusting, mopping, and cleaning litter from the yard using a grab stick and wheeled cart. Other employees were working in the position that was subsequently offered to Ms. Knaut, demonstrating that this was not a "make-work" position. Accordingly, given this evidence, the hearing officer did not err when concluding that Ms. Knaut had refused Lynco's job offer without good and reasonable cause.

C. Remaining Contentions

[¶14] Alternatively, Ms. Knaut contends that the hearing officer erred when determining that she is not entitled to receive 100% partial incapacity benefits. She also contests the hearing officer's finding that she presently has the capacity to earn $400.00 per week.

[¶15] Because we affirm the hearing officer's decision on the ground that Ms. Knaut is not entitled to continue to receive benefits pursuant to section 214(1), we do not need to reach these issues. Nevertheless, the hearing officer did not err when determining that Ms. Knaut was not entitled to 100% partial benefits because the record is devoid of evidence that work is unavailable within her local community as a result of the work injury. *See Monaghan v. Jordan's Meats*, 2007 ME 100, ¶ 13, 928 A.2d 786. And, while Ms. Knaut sought vocational rehabilitation assistance with the State, she did not do so pursuant to a board-ordered plan that would trigger a presumption that work is unavailable to her. 39-A M.R.S.A § 217(8).[1] Finally, the hearing officer's finding that Ms. Knaut is able to earn $400.00 per week is supported in the record by evidence that she had the

[1] Title 39-A M.R.S.A § 217(8) provides:

> **Presumption.** If an employee is participating in a rehabilitation plan ordered pursuant to subsection 2, there is a presumption that work is unavailable to the employee for as long as the employee continues to participate in employment rehabilitation.

ability to perform the tasks in the Auburn job, as well as evidence of her past income, skills and experience. *See* 39-A M.R.S.A. § 214(1)(B) (Supp. 2013).

## III. CONCLUSION

[¶16] 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 awarding Ms. Knaut the protection of the Act but denying her claim for ongoing incapacity benefits.

The entry is:

The hearing officer's decision is affirmed.

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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).

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