

RONALD C. MAHAR
(Appellant)

v.

BLUEBERRY FORD, INC.
(Appellee)

and

MADA WORKERS' COMPENSATION TRUST
(Group Self-Insurer)

Conference held: September 4, 2013

Decided: March 7, 2014

PANEL MEMBERS: Hearing Officers Greene, Jerome, and Elwin
By: Hearing Officer Jerome

[¶1] Ronald Mahar appeals from a decision of a Workers' Compensation Board hearing officer (*Pelletier, HO*), denying his Petition for Award for an alleged February 23, 2008, neck injury.¹ On appeal, Mr. Mahar contends that the hearing officer erred in failing to grant him the protection of the Workers' Compensation Act for that injury. In addition, Mr. Mahar maintains that the evidence compels a factual finding that the alleged 2008 work injury played a role in the need for cervical surgery in March of 2011.

¹ The hearing officer also denied a Petition for Award and for Payment of Medical and Related Services related to an alleged 2010 mental stress injury. Mr. Mahar does not appeal those rulings.

[¶2] The Appellate Division’s role on appeal is “limited to assuring that the [hearing officer’s] factual 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.” *Pomerleau v. United Parcel Serv.*, 464 A.2d 206, 209 (Me. 1983) (quotation marks omitted).

[¶3] The hearing officer made the following findings of fact:

Employee was plowing snow from the employer’s dealership parking lot on February 23, 2008. The plow struck an object sticking up from the ground causing his head to strike the roof or windshield of the vehicle. Employee was initially dazed and confused from a head injury. He went to the Emergency Room of the Calais Regional Hospital shortly after the incident. He complained of neck pain, however, the primary concern was a closed head brain injury, such as a concussion.

The contemporaneous medical records show that that employee was diagnosed with myofascial neck pain; however, he was not placed on work restrictions and lost no time from work.

....

[T]he February 23, 2008 work injury resulted in . . . several weeks or months of myofascial pain[.]

[¶4] These factual findings are supported in the record, and establish that Mr. Mahar sustained a work-related injury on February 23, 2008, but did not suffer any loss of earning capacity as a result. Accordingly, we conclude that Mr. Mahar is entitled to the protection of the Workers’ Compensation Act for that injury. *See Lamson v. Central Me. Power Co.*, 549 A.2d 377, 379 (Me. 1988).

[¶5] With respect to the specific allegation that he suffered loss of earning capacity due to the 2011 neck surgery, we conclude that the record contains competent evidence that supports the hearing officer's finding that there is no causal relationship between the February 23, 2008, work injury and Mr. Mahar's need for surgery in 2011. Accordingly, we affirm the hearing officer's decision in that regard.

The entry is:

The hearing officer's decision is modified to reflect that the Petition for Award for the February 23, 2008, date of injury is granted in part, and that the employee is awarded the protection of the Workers' Compensation Act for that injury. In all other respects, 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).

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