MARY ELLEN E. HUNT
(Appellee)

v.

MAINE COAST REGIONAL HEALTHCARE CORPORATION
(Appellant)

and

SYNERNET

Argument held: September 21, 2016
Decided: April 24, 2017

PANEL MEMBERS: Administrative Law Judges Knopf, Goodnough, and Jerome
BY: Administrative Law Judge Knopf

[¶1] Maine Coast Regional Healthcare Corporation appeals from a decision of a Workers' Compensation Board administrative law judge (*Greene, ALJ*) granting Mary Ellen Hunt's Petition for Award of Compensation for a September 30, 2009, right knee injury. Maine Coast contends that the ALJ erred by (1) awarding incapacity benefits based on factors unconnected to the injury; and (2) by disallowing an offset for severance pay. We affirm the ALJ's decision.

I. BACKGROUND

[¶2] Mary Ellen Hunt suffered an injury to her right knee on September 30, 2009, while working at Maine Coast Regional Healthcare Corporation. Maine Coast began paying Ms. Hunt voluntarily on May 17, 2010. Maine Coast increased those payments to 100% partial incapacity benefits on June 13, 2010, when it laid

Ms. Hunt off. Ms. Hunt also received severance pay of $7,558.40. Effective December 5, 2011, Maine Coast reduced Ms. Hunt's payments to a fixed rate of partial benefits of $109.48 per week based on an imputed earning capacity of $753.67. On April 1, 2013, Maine Coast alleged that the effects of the work-related injury had ended and discontinued payments altogether.

[¶3] Ms. Hunt began looking for alternative work in March of 2011. She initially had the help of Gina Temple, a vocational rehabilitation specialist. Ms. Temple's services ended in August of 2011. After undergoing eight weeks of unpaid training, Ms. Hunt found work in April of 2013 at Hollywood Casino as a dealer. Ms. Hunt's base pay was initially $4.25 per hour plus tips; in April of 2014 her base pay was increased to $4.38 per hour. Ms. Hunt's earnings varied a great deal and were largely dependent on tips. Ms. Hunt's bi-weekly wages over a nineteen month period varied from about $800.00 to $1,500.00, substantially below her preinjury average weekly wage of $953.30 plus $49.95 in fringe benefits.

[¶4] The medical records in evidence included a report by Dr. Bradford, who performed an independent medical examination pursuant to 39-A M.R.S.A § 312 (Supp. 2016), that limited Ms. Hunt to sedentary work. In addition, although Ms. Hunt had a preexisting knee condition, Dr. Bradford found that Ms. Hunt's right knee problems were at least in part caused by the work injury. The ALJ

concluded that Ms. Hunt "met her burden of proving that she suffered a work-related twisting injury to her right knee on September 30, 2009, which aggravated a preexisting degenerative condition in that knee and thereafter contributed in a significant manner to her disability from her right knee condition."

[¶5] The ALJ concluded in a 2015 decree, consistent with Dr. Bradford's report, that Ms. Hunt was entitled to varying rates partial incapacity benefits from April 1, 2013, to July 13, 2014, and a fixed rate of partial thereafter based on a residual earning capacity of $650.00 per week. The ALJ specifically found that "the variations in earnings have nothing to do with [Ms. Hunt's] actual physical limitations but, instead, are inherent in the largely gratuity-based nature of her income."

[¶6] Regarding the severance agreement and payment, the ALJ initially stated that "[Maine Coast] is entitled to all offsets permitted by law including the amount [Ms. Hunt] received as severance pay." Both parties filed motions for findings of fact and conclusions of law, which the ALJ granted. In the ALJ's further findings of fact and conclusions of law, he determined that Maine Coast is not entitled to an offset for the severance pay as provided for in the original decision, "because (1) [Maine Coast] did not submit evidence of any such payment prior to the close of evidence and did not seek to reopen the evidence for that purpose; and (2) [t]he mere fact that payments are characterized by the parties as

'severance pay' is insufficient, as a matter of law, to determine whether the payments are a 'wage continuation plan,' [*Daley v. Spinnaker Indus., Inc.*, 2002 ME 134, ¶¶ 12-13, 803 A.2d 446]." This appeal followed.

II. DISCUSSION

A. Standard of Review

[¶7] The role of the Appellate Division "is limited to assuring that the [ALJ'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) (quotation marks omitted). Because both parties requested findings of fact and conclusions of law following the decision, the Appellate Division will "review only the factual findings actually made and the legal standards actually applied by the hearing officer." *Daley*, 2002 ME 134, ¶ 17.

B. Award of Partial Incapacity Benefits

[¶8] Maine Coast argues that the ALJ erred in awarding incapacity benefits because Ms. Hunt did not demonstrate any earning incapacity related to the work injury, but rather, she demonstrated only that her income varied because of the nature of gratuity-based compensation.

[¶9] However, the ALJ specifically found, in line with Dr. Bradford's opinion, that Ms. Hunt was partially incapacitated as a result of the work injury

and subject to significant restrictions limiting her to sedentary work. Ms. Hunt was laid off from her job at the hospital, which exceeded her restrictions. After her layoff, Ms. Hunt undertook a work search over a number of years before finding the job at Hollywood Casino, which fell within her restrictions. The fact that her compensation varied at the casino job and, on rare occasions, came close to matching her preinjury average weekly wage, does nothing to undercut the fact that she took employment generally earning significantly less than her preinjury employment due to the restrictions related to the work injury. We find no error in the ALJ's decision to award incapacity benefits.

C. Severance Agreement and Payment

[¶10] Maine Coast also argues that it was error for the ALJ to disallow an offset for the severance payment and to exclude from evidence the severance agreement that was submitted with its post-hearing position paper.

[¶11] The ALJ's exclusion of the severance agreement was within his discretion because it was submitted after the close of evidence and without a request to reopen the evidence. *See Matthews v. Shaw's Supermarkets,* Me. W.C.B. No. 15-25, ¶ 20 (App. Div. 2015). Further, the ALJ did not err in concluding that Maine Coast's characterization of its payment to Ms. Hunt as a severance payment was insufficient to demonstrate that the payment was a wage continuation plan within the meaning of 39-A M.R.S.A § 221(3)(A)(2) (Supp. 2016). *See Daley,*

2002 ME 134, ¶ 12-13 (holding that because severance pay is commonly understood as payment in exchange for an employee's agreement to terminate the employment, the ALJ must have sufficient information to make findings concerning the nature and purpose of the payments to determine whether the payments are intended as wage replacement).

III. CONCLUSION

[¶12] Because the ALJ's findings were supported by competent evidence, the decision involved no misconception of applicable law, and the application of the law to the facts was neither arbitrary or without rational foundation, we affirm the ALJ's decision.

The entry is:

The administrative law judge'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. 2016).

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