JOHN R. JOHNSON
(Appellant)

v.

JAMES RIVER CORPORATION
(Appellee)

and

SEDGWICK CMS
(Insurer)

Decided: December 5, 2013
Conferenced: July 24, 2013

Panel Members: Hearing Officers Elwin, Stovall, and Collier
By: Hearing Officer Collier

[¶1] John R. Johnson appeals from a decision of a Workers' Compensation Board hearing officer (*Greene, HO*) denying his Petitions for Restoration and for Payment of Medical and Related Services related to an April 15, 1990 work injury to his lower back, stomach, hip, and knee. The current dispute involves claimed incapacity for and treatment of his low back. We affirm the hearing officer's decision.

[¶2] Mr. Johnson first contends that the hearing officer's decision should be vacated because it is inconsistent with prior Board rulings that have established a relationship between his back problems and the 1990 work injury. *See Grubb v. S.D. Warren Co.*, 2003 ME 139, ¶ 9, 837 A.2d 117 (establishing preclusive

effect of workers' compensation board decisions, including findings of fact). Mr. Johnson seeks payment for treatment related to a specific condition—lumbar facet hypertrophy—that the hearing officer determined was not causally related to the 1990 work injury. We have reviewed the prior decrees in this case and conclude that they contain no specific findings that this condition resulted from the 1990 work injury. To the extent that they state particularized findings regarding the back injury or back treatment, the 1996 and 1999 decrees specifically limit compensability to treatment of the sacroiliac, gluteal, and rectus muscle injuries and exclude treatment for discogenic pain.

[¶3] Second, Mr. Johnson contends that the hearing officer erred when denying the petition for restoration. He asserts that the hearing officer misapplied the law in two respects: (1) by failing to consider that Mr. Johnson remains disabled as a result of the 1990 back injury regardless of subsequent nonwork-related injuries to his jaw and left leg suffered in a 2000 all-terrain vehicle accident; *see Roy v. Bath Iron Works*, 2008 ME 94, 952 A.2d 965, and (2) by requiring that Mr. Johnson establish that the 1990 work injury has been a "substantial contributor" to his loss of earning capacity.

[¶4] Title 39-A M.R.S.A. § 201(5) (Supp. 2012)[1] requires the hearing officer to separate out the effects of the subsequent nonwork-related injuries when

[1] Title 39-A M.R.S.A. § 201(5) provides:

calculating the amount of benefits to be awarded. *Roy*, 2008 ME 94, ¶ 11, 952 A.2d 965. When an employee suffers incapacity from a work injury, section 201(5) does not require that the employee's incapacity level be reduced by the effects of subsequent nonwork-related injuries that are also disabling. *Roy*, 2008 ME 94, ¶ 11, 952 A.2d 965. Pursuant to *Roy*, when an employee's earnings are diminished due to a work injury, a subsequent nonwork injury should have no effect on the level of incapacity benefits awarded.

[¶5] The hearing officer did not misapply *Roy*. He separated out the effects of the subsequent nonwork injury and concluded that absent those effects, Mr. Johnson did not prove that his earning capacity is diminished as a result of the 1990 work injury.

[¶6] With respect to whether the hearing officer applied the appropriate legal standard, the hearing officer stated that he was not persuaded that the 1990 work injury "has been a substantial contributor to the employee's loss of earning capacity in recent years." However, the claimant's burden on a petition for restoration is to show "that he is either totally or partially incapacitated to earn as a result, in whole or in part, of a work-related injury." *Hardy v. Hardy's Trailer Sales, Inc.*, 448 A.2d 895, 898 (Me. 1982). The claimant may do so "by

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**Subsequent nonwork injuries**. If an employee suffers a nonwork-related injury or disease that is not causally connected to a previous compensable injury, the subsequent nonwork-related injury or disease is not compensable under this Act.

demonstrating a causal relationship between his inability to find work and his work-related . . . limitation." *Id.*; *see also Mathieu v. Bath Iron Works*, 667 A.2d 862 (Me. 1995) (stating employee bears the burden on a petition for restoration to show that the "incapacity was caused, at least in part, by a work-related injury").

[¶7] Although the hearing officer may have overstated the requirement when using the phrase "substantial contributor," we nevertheless find no reversible error. The hearing officer listed multiple factors that support the finding that Mr. Johnson's current lack of earnings is not caused by the 1990 work injury, including that (1) Mr. Johnson was able to continue working at his pre-injury job until 2000; (2) Mr. Johnson left work in 2000 due to serious injuries resulting from the nonwork-related ATV accident; (3) Mr. Johnson did not demonstrate any interest in returning to work, even on a part-time basis; (4) Dr. Ritter's opinion that Mr. Johnson has no work capacity does not indicate how, if at all, the 1990 work injury contributes to his earning incapacity; and (5) Mr. Johnson suffered multiple potentially disabling musculoskeletal injuries as a result of a recent nonwork-related fall. There is ample evidence in the record to support the hearing officer's conclusion that Mr. Johnson did not prove that his current loss of earning capacity is causally related to the 1990 work injury.

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. 2012).

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