JULIE B. OUELLETTE
(Appellant)

v.

CENTRAL MAINE MEDICAL CENTER
(Appellee)

and

FUTURECOMP/TD INSURANCE, INC.
(Insurer)

Decided: August 15, 2013
Argued: July 24, 2013

PANEL MEMBERS: Hearing Officers Elwin, Stovall, and Collier
BY: Hearing Officer Collier

[¶1] Julie Ouellette appeals from a decision of a Workers' Compensation Board hearing officer (*Goodnough, HO*) denying Ms. Ouellette's Petition for Review, granting Central Maine Medical Center's Petition for Review, and awarding Ms. Ouellette ongoing partial incapacity benefits at a rate reflecting a post-injury earning capacity in the range of $500 per week.

[¶2] The Appellate Division's role on appeal is "limited to assuring that the [hearing officer's] . . . 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). The hearing officer's findings of fact are not subject to appeal. 39-A M.R.S.A. § 321-B(2) (Supp. 2012).

[¶3] Contrary to Ms. Ouellette's primary contention, the hearing officer did not misconceive or misapply the law by adopting the medical findings of the independent medical examiner, or by failing to adopt other doctors' medical findings submitted after the independent medical examiner issued his report. *See* 39-A M.R.S.A. § 312 (6), (7) (Supp. 2012) (requiring that the independent medical examiner's medical findings be adopted absent clear and convincing contrary evidence, and that medical evidence obtained after a section 312 examination be submitted to the examiner no later than fourteen days prior to the hearing).

[¶4] The appellant's specific argument—that she should be excused from the requirements of 39-A M.R.S.A. § 312(6) because she only learned that the insurer had filed its Notice of Controversy contesting her claim for total incapacity benefits within the fourteen-day window—also lacks merit. Ms. Ouellette did not request leave to submit the new medical opinions to the independent medical examiner for a supplemental report pursuant to section 312(6). She neither requested that the hearing officer vary the applicable time frames pursuant to Me. W.C.B. Rule, ch. 4, § 3(7), nor asked for leave to depose the examiner pursuant to Rule ch. 4, § 3(6). In fact, she made no attempt to put the additional opinions before the independent medical examiner. The sequence of events in this case was

not so procedurally exceptional as to mandate, as a matter of law, a deviation from the requirements of the Act and Rule.

[¶5] Further, the hearing officer did not err by imputing a post-injury earning capacity based on the findings of the independent medical examiner regarding Ms. Ouellette's work restrictions and evidence that continued employment was available to her with her current employer within those restrictions. *See* 39-A M.R.S.A. § 214(1)(B) (Supp. 2012); *see also Monaghan v. Jordan's Meats*, 2007 ME 100, ¶ 9, 928 A.2d 786 ("The employee's 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." (quotation marks omitted)). This evidence also met the employer's burden as the petitioner on the issue of post-injury earning capacity. *See Fecteau v. Rich Vale Constr., Inc.*, 349 A.2d 162, 165-66 (Me. 1975); *Flanigan v. Ames Dep't Store*, 652 A.2d 83, 85 (Me. 1995).

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. 2012).

Attorney for Appellant/Employee:
Robert A. Laskoff, Esq.
LASKOFF & ASSOCIATES
P.O. Box 7206
Lewiston, ME 04243-7206

Attorney for Appellee/Employer:
William O. LaCasse, Esq.
NORMAN HANSON & DeTROY
P.O. Box 4600
Portland, ME 04112-4600