# WC Appellate Division Decision issued on June 7, 2019 – Termination Due to Cause from Post-Injury Employment

Termination Due to Cause from Post-Injury Employment A recently issued Appellate Division case provides some clarity to the murky question as to what effect, if any, does termination due to cause have on the analysis of an injured worker's post-injury earning capacity. In O'Leary v. Northern Maine Medical Center, the employee sustained a 2011 back injury. For a period following the injury, she was able to return to her regular job but her employment subsequently ended based on her termination for cause. After her termination, she found employment with a new employer earning less. She filed a Petition for Review seeking to establish entitlement to ongoing partial benefits given the reduced earnings. In the underlying decree, the ALJ made the factual finding that the work injury continued to result in the need for restrictions. However, he held that the work injury had not resulted in reduced earning capacity. In doing so, the ALJ held that while the earnings for the new employer did constitute prima facie evidence of her post-injury ability to earn, it was also appropriate to include the earnings from the job she lost in his analysis given that the termination was due to her own fault. Since she was earning consistent with her pre-injury average weekly wage prior to her termination, the ALJ concluded that the employee failed to demonstrate that the reduced earnings were caused by the injury. As such, her Petition for Review was denied. On appeal, the Appellate Division affirmed. Although this would appear to be the perfect opportunity for the Appellate Division to address the ambiguity present in 39-A M.R.S. §214(1)(D) and (E), they chose not to do so. Rather, they simply confirmed that analysis of the ALJ contained no legal error and the post-injury/pre-termination earnings constituted competent evidence of earning capacity. Please feel free to contact Lindsey M. Sands, Esq. at lsands@nhdlaw.com with any questions.

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