ROBERT CHAREST
(Appellant)

v.

HYDRAULIC HOSE & ASSEMBLIES, LLC
(Appellee)

and

THE HANOVER INSURANCE GROUP
(Insurer)

Conference held: May 7, 2020
Decided: June 15, 2020

PANEL MEMBERS: Administrative Law Judges Pelletier, Elwin, and Knopf
BY: Administrative Law Judge Elwin

[¶1] Robert Charest appeals from a decision of a Workers' Compensation Board administrative law judge (*Collier, ALJ*), denying his Petition for Review regarding his April 27, 2001, work injury. The ALJ determined that Mr. Charest's claims were barred by the statute of limitations. Mr. Charest asserts the employer's ongoing obligation to pay benefits and the Social Security payments he received served to toll the limitations period. We disagree and affirm the decision.

I. BACKGROUND

[¶2] Mr. Charest sustained a gradual low back injury while working for Hydraulic Hose & Assemblies in 2001. The board issued a decree on March 27, 2006, awarding Mr. Charest 35% ongoing partial incapacity benefits. Following that decree, Hydraulic Hose, through its insurer Hanover Insurance, made two

payments to Mr. Charest: one check for accrued benefits, and one check for weekly benefits in the amount of $94.92. The last payment was made on April 11, 2006. Thereafter, Hanover advised Mr. Charest through counsel that it would be taking an offset for Social Security retirement benefits that Mr. Charest had been receiving since 2003. *See* 39-A M.R.S.A. § 221(3)(A)(1) (Pamph. 2020) (authorizing a reduction of the employee's workers' compensation benefit by "[f]ifty percent of the amount of old-age insurance benefits received or being received under the United States Social Security Act.") Because the offset reduced Hydraulic Hose's payment obligation under the Act to zero, no additional benefit payments were made to Mr. Charest after April 11, 2006.

[¶3] Mr. Charest filed a Petition for Review in 2017. The ALJ denied the petition, concluding that the claims were barred by the applicable statute of limitations, 39-A M.R.S.A. § 306(2) (Supp. 2011). After the ALJ denied Mr. Charest's Motion for Further Findings of Fact and Conclusions of Law, *see* 39-A M.R.S.A. § 318 (Pamph. 2020), Mr. Charest filed this appeal.

II. DISCUSSION

[¶4] The statute of limitations provides: "If an employer or insurer pays benefits under this Act . . . the period during which an employee . . . must file a petition is 6 years from the date of the most recent payment." 39-A M.R.S.A. § 306(2). The ALJ found, and there was no dispute, that the last benefit check was

paid to Mr. Charest on April 11, 2006. Mr. Charest filed his Petition for Review on May 1, 2017, eleven years after the date of that payment. Relying on the plain language of the statute, the ALJ determined that because the last payment under the Act was made more than six years before Mr. Charest filed his petition, his claims were barred.

[¶5] Mr. Charest first asserts that the statute of limitations has not expired because Hydraulic Hose retained an obligation to pay benefits, even though this obligation is subject to statutory offsets that eliminated its responsibility to send checks to Mr. Charest. This contention lacks merit. The language of the statute supports the ALJ's conclusion that the limitations period has run as to Mr. Charest's claims for the 2001 injury. Section 306 plainly provides that the six-year period begins to run from a payment of benefits, not from an ongoing obligation to pay benefits that is eliminated when payments are properly coordinated pursuant to section 221. *See Graves v. Brockway-Smith Co*., 2012 ME 128, ¶ 9, 55 A.3d 456 (stating that when construing provisions of the Workers' Compensation Act, the board should look first to the plain meaning of the statutory language).

[¶6] Mr. Charest further contends that his receipt of Social Security retirement benefits served to toll the statute of limitations, citing *Stockford v. Bath Iron Works Corp.*, 482 A.2d 843 (Me. 1984). In *Stockford*, the Law Court held that

payments under the federal Longshore Act are "essentially equivalent" to Workers' Compensation Act payments and operate to toll the limitations period. *Id.* at 845.

[¶7] The ALJ declined to extend the *Stockford* rationale to the facts of this case because Social Security retirement benefits are not similarly equivalent to workers' compensation benefits. He reasoned that they do not represent compensation for inability to work due to a workplace injury. Further, they are available to qualifying individuals regardless of whether they sustain work injuries.

[¶8] Mr. Charest contends this was error, citing *Urrutia v. Interstate Brands International*, 2018 ME 24, 179 A.3d 312. He contends that *Urrutia* stands for the proposition that Social Security retirement benefits and workers' compensation benefits are equivalent because they both serve to replace income and are treated as equivalent by the Legislature. We disagree.

[¶9] The issue in *Urrutia* was whether section 221 permitted the employer to take a credit in the present for past Social Security payments made to the employee while he was also receiving workers' compensation benefits. *Id.* ¶ 9. The Court looked to both the plain language of the statute and its purpose and determined that a credit was authorized. *Id.* ¶ 18. The Court reasoned in part that if the credit were not allowed, the employee would receive an impermissible double recovery, citing *Foley v. Verizon*, 2007 ME 128, ¶ 11, 931 A.2d 1058.[1]

[1] The Court in *Foley* noted:

[¶10] Thus, the Court in *Urrutia* was concerned about the *level* of income from different sources when combined, rather than the *purpose* of the sources of income. We do not read that case as analogizing Social Security retirement and workers' compensation benefits in the manner that Longshore and workers' compensation benefits were analogized in *Stockford.*

[¶11] Accordingly, the ALJ did not err when determining that the receipt of Social Security benefits did not toll the statute of limitations.

The entry is:

The administrative law judge's decision is affirmed.

> "The purpose of the coordination of benefits provision is to preclude anyone from receiving a greater income because of the receipt of Social Security or retirement benefits along with workers' compensation than they would have received had they continued to work." Sen. Amend. B to L.D. 1634, No. S-217, Statement of Fact (112th Legis. 1985). The Statement of Fact that follows the current coordination provision states that section 221 "allows coordination of benefits in a manner similar to the former Title 39, section 62-B. . . ." L.D. 2464, Statement of Fact, § A, at 214 (115th Legis. 1992).

2007 ME 128, ¶ 7 n.3, 931 A.2d 1058.

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 (Pamph. 2020).

Pursuant to board Rule, chapter 12, § 19, all evidence and transcripts in this matter may be destroyed by the board 60 days after the expiration of the time for appeal set forth in 39-A M.R.S.A. § 322 unless (1) the board receives written notification that one or both parties wish to have their exhibits returned to them, or (2) a petition for appellate review is filed with the law court. Evidence and transcripts in cases that are appealed to the law court may be destroyed 60 days after the law court denies appellate review or issues an opinion.

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