

TRAVIS NICKERSON
(Appellant)

v.

PAUL'S MARINA
(Appellee)

and

MAINE EMPLOYERS' MUTUAL INSURANCE COMPANY
(Insurer)

Conferenced: January 29, 2015

Decided: May 18, 2016

PANEL MEMBERS: Administrative Law Judges Stovall¹, Jerome, and Pelletier
BY: Administrative Law Judge Stovall

[¶1] Travis Nickerson appeals from a decision of a Workers' Compensation Board administrative law judge (*Goodnough, ALJ*) granting his Petitions for Award and for Payment of Medical and Related Services, but denying his request for penalties pursuant to Me. W.C.B. Rule, ch. 1, § 1, the "fourteen-day rule." The ALJ determined that Paul's Marina did not violate Me. W.C.B. Rule, ch. 1, § 1, concluding that Mr. Nickerson did not provide sufficient notice that he was making a claim for workers' compensation benefits at the relevant time and that there was evidence in the record indicating that Mr. Nickerson only claimed

¹ Pursuant to P.L. 2015, ch. 297 (effective October 15, 2015) Workers' Compensation Board hearing officers licensed to practice law are now designated administrative law judges.

one day of lost time until October of 2010. Based on the facts and circumstances of this case, we affirm the ALJ's decision.

I. BACKGROUND

[¶2] Travis Nickerson started working as a general laborer for Paul's Marina on April 7, 2010. His primary responsibilities included painting and launching boats during the busy spring season. Mr. Nickerson suffered two work related incidents while employed at the marina: (1) on May 4, 2010, he was struck in the head with a metal beam that was attached to a crane resulting in post-concussive syndrome, residual headache issues, and psychological deficits; and (2) on May 24, 2010, he hit his head when he walked into a boat propeller hanging from a boat on a storage rack. The second incident did not result in further injury.

[¶3] Mr. Nickerson reported the May 4, 2010, injury to Judy Marsh of Paul's Marina on May 7, 2010, and obtained treatment at her insistence. Paul's Marina made contact with its insurer, Maine Employers' Mutual Insurance Company (MEMIC) on May 10, 2012, but no first report of injury was filed at that time. With the possible exception of May 10, 2010, Mr. Nickerson continued working through May 24, 2010.

[¶4] The ALJ found that on May 24, 2010, Mr. Nickerson likely informed Paul's Marina that he was not feeling well and that the Paul's Marina likely associated the Mr. Nickerson's 'illness' with his work related head injury. The ALJ

also found that while Mr. Nickerson's job was slated to end on May 28 or 29, 2010, Memorial Day weekend, Mr. Nickerson was probably allowed to go home on May 24, 2010, for reasons related to his work related injury.

[¶5] On June 1, 2010, Mr. Nickerson completed and signed a "Statement of the Injured Employee" form at MEMIC's request. Mr. Nickerson indicated on the form that his injury had only caused one day of incapacity: May 10, 2010. Subsequently, in early October, 2010, Mr. Nickerson's mother contacted MEMIC to inform it that her son was out of work due to the May 4, 2010, head injury. On October 6, 2010, MEMIC filed a notice of controversy, controverting the lost time claim, but agreeing to pay for reasonable and necessary medical treatment related to the injury.

[¶6] The ALJ issued a decision on May 13, 2014, and later, pursuant to a Motion for Findings of Fact and Conclusions of Law, modified that decision on July 11, 2014. In that modified decision, the ALJ determined that Mr. Nickerson is entitled to workers' compensation benefits at the rate of \$158.44 from May 25, 2010, through the present, and continuing, pursuant to 39-A M.R.S.A. § 213 (Supp. 2015), as well as reasonable and necessary medical treatments related to the work injury. The ALJ determined that there was no violation of Me. W.C.B. Rule, ch. 1, § 1, because Paul's Marina was not provided with the information necessary to conclude that a claim for incapacity benefits was being made on May, 24, 2010,

and Mr. Nickerson did not consider himself out of work due to the injury as of June 1, 2010, or thereafter until October 2010. Mr. Nickerson appeals the fourteen-day rule issue only.

II. DISCUSSION

A. Standard of Review

[¶7] Appeals from decisions of administrative law judges are governed by 39-A M.R.S.A. §§ 321-B, 322 (Supp. 2015). Section 321-B (2) provides that “[a] finding of fact by an administrative law judge is not subject to appeal under this section.” 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). When a party requests and proposes additional findings of fact and conclusions of law, as in this case, “we review only the factual findings actually made and the legal standards actually applied by the hearing officer.” *Daley v. Spinnaker Indus., Inc.*, 2002 ME 134, ¶ 17, 803 A.2d 446 (quotation marks omitted).

B. Alleged Violation of Me. W.C.B. Rule, ch. 1, § 1

[¶8] Mr. Nickerson argues that Paul’s Marina’s knowledge on May 24, 2010, that he could no longer work because of his work injury was sufficient to

trigger the employer's obligation under Me. W.C.B. Rule, ch. 1, §1.² In support of his assertion, Mr. Nickerson relies in part on *Stickles v. United Parcel Service*, 554 A.2d 1176 (Me. 1989). In dealing with the fourteen-day rule in the context of the "Early Pay System", 39 M.R.S.A. § 51-B (1983) *repealed by* PL 1991, C. 885, PT. A, §7, the Law Court found in *Stickles*: "The statutory language could not be

² Me. W.C.B. Rule, ch. 1 provides, in relevant part:

§ 1. Claims for Incapacity and Death Benefits

1. Within 14 days of notice or knowledge of a claim for incapacity or death benefits for a work-related injury, the employer or insurer will:
 - A. Accept the claim and file a Memorandum of Payment checking "Accepted"; or
 - B. Pay without prejudice and file a Memorandum of Payment checking "Voluntary Payment Pending Investigation"; or
 - C. Deny the claim and file a Notice of Controversy.
2. Notice of the claim must be provided consistent with 39-A M.R.S.A. § 301, or to the employer's insurance carrier at the address registered with the Bureau of Insurance.
3. If the employer fails to comply with the provisions of Rule 1.1, the employee must be paid total benefits, with credit for earnings and other statutory offsets, from the date the claim is made in accordance with 39-A M.R.S.A. § 205(2) and in compliance with 39-A M.R.S.A. § 204. The employer may discontinue benefits under this subsection when both of the following requirements are met:
 - A. The employer files a Notice of Controversy; and
 - B. The employer pays benefits from the date the claim is made. If it is later determined that the average weekly wage/compensation rate used to compute the payment due was incorrect, and the amount paid was reasonable and based on the information gathered at the time, the violation of Rule 1.1 is deemed to be cured.

clearer: [The employers] were obligated to pay compensation at some level to [the employees] within 14 days after the employees notified them that lost time was related to their injuries.” Id. 1178.

[¶9] In the matter before us, the ALJ found that Paul’s Marina was:

[l]ikely alert to the employee’s ongoing head condition and if he came to her not feeling well and wanting to go home early, she would have likely associated his ‘illness’ with the head injury... Thus, I find that the employee was likely allowed to go home on the 24th for reasons connected to the head injury.

Unlike *Stickles*, we do not need to reach the issue of whether Mr. Nickerson’s notice triggered Paul’s Marina’s obligation under Me. W.C.B. Rule, ch. 1, § 1. What differentiates Mr. Nickerson’s case from *Stickles* is the fact that, as the ALJ found: “It must also be recalled that Employer Exhibit 1, despite some inaccuracies on that form, is evidence that *the employee did not consider himself out of work due to the injury as of June 1, 2010.*” (Emphasis added).

[¶10] Based on the report to MEMIC on June 1, 2010, the ALJ had a rational basis to conclude that Paul’s Marina did not violate Me. W.C.B. Rule, ch. 1, § 1 because, regardless of Mr. Nickerson’s statement on May 24, 2010, he effectively withdrew his request for lost wage benefits before the fourteen days had expired. The ALJ’s decision was within his discretion as fact finder.

[¶11] Because the ALJ's findings were supported by competent evidence, and the application of the law was neither arbitrary nor 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. 2015).

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