

DAVID CANTARA
(Appellee)

v.

DUBE DESIGN & CONSTRUCTION, INC.
(Appellant)

Conference held: April 7, 2016
Decided: October 20, 2016

PANEL MEMBERS: Administrative Law Judges Elwin, Hirtle, and Jerome
BY: Administrative Law Judge Elwin

[¶1] Dube Design & Construction, Inc., appeals from a September 16, 2015, decision of a Workers' Compensation Board hearing officer (*Dunn, HO*) granting David Cantara's Petition for Forfeiture pursuant to 39-A M.R.S.A § 324(2) (Supp. 2015) and ordering Dube Design to pay Mr. Cantara a \$5,000 penalty. Dube Design failed to make benefit payments within ten days of a decree awarding compensation to Mr. Cantara. Dube Design asserts that the underlying decree on which the hearing officer relied is void *ab initio* because Mr. Cantara was an independent contractor and Dube Design therefore was not an "employer" subject to the sanctions of 39-A M.R.S.A. §324(2).

[¶2] We disagree. Mr. Cantara's employment status was determined in an underlying decree. *See Cantara v. Dube Design & Construction, Inc., W.C.B.*

13-00-51-31A (Me. 2014). Even if that determination had been incorrect¹, Dube Design remains liable for payment of the benefits ordered, pursuant to section 324(1), which provides, in part:

Order or decision. The employer or insurance carrier shall make compensation payments within 10 days after the receipt of notice of an approved agreement for payment of compensation or within 10 days after any order or decision of the board awarding compensation. If the board enters a decision awarding compensation, and a motion for findings of fact and conclusions of law is filed with the administrative law judge or an appeal is filed with the division pursuant to section 321-B or the Law Court pursuant to section 322, payments may not be suspended while the motion for findings of fact and conclusions of law or appeal is pending.

Thus, the hearing officer did not err in imposing penalties on Dube Design pursuant to section 324(2) after Dube Design failed to make benefit payments in accordance with a decision and additional findings of fact determining that Mr. Cantara was entitled to workers' compensation benefits.² Moreover, the hearing officer's decision is supported by competent evidence, involved no misconception of applicable law, and 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).

¹ The Appellate Division affirmed the ALJ's decision that determined that Mr. Cantara was an employee of Dube Design in *Cantara v. Dube Design & Construction, Inc.*, Me. W.C.B. No. 16-30 (App. Div. 2016).

² We note that failing to make both ordered benefit and penalty payments may be considered a willful violation of the Workers' Compensation Act and could subject an employer to further penalties under 39-A M.R.S.A § 360(2) (Supp. 2015).

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. 2015).

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