RONALD FLANAGIN
(Appellee)

v.

STATE OF MAINE,
DEPARTMENT OF INLAND FISHERIES & WILDLIFE
(Appellant)

Argument held: April 6, 2016
Decided: March 21, 2017

PANEL MEMBERS: Administrative Law Judges Elwin, Goodnough, and Stovall
BY: Administrative Law Judge Goodnough

[¶1] State of Maine, Department of Inland Fisheries and Wildlife appeals from a decision of a Workers' Compensation administrative law judge (*Jerome, ALJ*) granting Ronald Flanagin's Petition for Award filed in connection with a 1975 injury. The Department contends that the ALJ erred by concluding that it had "contemporaneous notice" within the ten year statute of limitations period so as to toll the statute relative to a 1975 work injury. The Department also argues that the ALJ erred in concluding that the doctrines of waiver and laches did not bar Mr. Flanagin's Petition and that it was error to award Mr. Flanagin ongoing total incapacity benefits. We find no error, and affirm the ALJ's decision.

I. BACKGROUND

[¶2] In *Flanagin v. State Dep't of Inland Fisheries and Wildlife*, Me. W.C.B. No. 14-22 (App. Div. 2014), the Appellate Division considered and

rejected the Department's contention that the ALJ erred by concluding that it had "contemporaneous notice" within the ten year statute of limitations period so as to toll the statute relative to a 1975 work injury. The Division, vacating the decision in part, and remanding to the ALJ, held that the Department had been provided with contemporaneous notice within the ten year statute of limitations and that payments made on a 1979 injury were related to an earlier 1975 injury. The appellate panel directed the ALJ to hold "further proceedings consistent with this decision on the employee's petitions relative to the 1975 injury." *Id.* The Department filed a Petition for Appellate Review with the Law Court, which was denied in an Order dated December 4, 2014.

[¶3] The ALJ on remand incorporated much of the Division's language in a revised decision, finding that Mr. Flanagin had proven that the Department had been put on notice that medical treatment for a 1979 work injury implicated the 1975 injury. Accordingly, the ALJ considered Mr. Flanagin's underlying claim of incapacity associated with the 1975 injury and awarded him varying partial benefits capped at 25% for the period during which Mr. Flanagin was working, and then total incapacity benefits from July 13, 2011, through the present, and continuing. The ALJ also considered and rejected the Department's newly raised waiver and laches defenses, finding that there is neither case law nor statutory authority for applying either defense in the circumstances presented. The ALJ

denied the Department's Motion for Further Findings of Fact and Conclusions of Law, and this appeal followed.

II. DISCUSSION

A. Standard of Review

[¶4] The Appellate Division is "limited to assuring that the [administrative law judge's] factual 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." *Pomerleau v. United Parcel Serv.*, 464 A.2d 206, 209 (Me. 1983). Since the Department requested findings of fact and conclusions of law following the decision, the Appellate Division will "review only the factual findings actually made and the legal standards actually applied by the [ALJ]." *Daley v. Spinnaker Inds., Inc*., 803 A.2d 446, 452 (Me. 2002).

B. Statute of Limitations Defense

[¶5] The Department contends that Mr. Flanagin's claim relative to the 1975 injury is barred by the applicable ten year statute of limitations. 39 M.R.S.A. § 95 (Supp. 1982).[1] This precise issue, involving the same parties now before us, was decided in the prior appeal. *Flanagin,* Me. W.C.B. No. 14-22. The ALJ on

[1] Title 39 M.R.S.A. § 95 has been repealed and replaced by P.L. 1991, ch. 885, §§ A-7, A-8 (effective January 1, 1993) (codified at 39-A M.R.S.A. § 306 (Supp. 2016)).

remand applied that decision as directed on the statute of limitations issue, and we find no error in that application.

C. Doctrines of Waiver and Laches

[¶6] The Department contends that the ALJ erred in refusing to apply the doctrines of waiver and laches because of Mr. Flanagin's unreasonable delay in bringing a claim for the 1975 injury. This issue was raised during the remand proceeding and was not raised in the previous appeal. To support its contention, the Department relies on authority from other jurisdictions.

[¶7] The ALJ rejected the Department's proposed application of those defenses because "there is neither statutory nor case law which supports the proposition that a Board [ALJ] has authority to apply either defense in the circumstances presented."

[¶8] The doctrine of laches applies to preclude a claim when there is "negligence or omission seasonably to assert a right. It exists when the omission to assert the right has continued for an unreasonable and unexplained lapse of time, and under circumstances where the delay has been prejudicial to an adverse party, and where it would be inequitable to enforce the right." *Dep't of Human Servs. v. Bell*, 1998 ME 123, ¶ 7, 711 A.2d 1292 (quoting *Fisco v. Dep't of Human Servs*., 659 A.2d 274, 275 (Me. 1995)). Even when the statute of limitations has not

expired on a cause of action, the doctrine of laches can still apply to preclude a claim. *Ne. Harbor Golf Club v. Harris*, 1999 ME 38, ¶ 19-23, 725 A.2d 1018.

[¶9] The Law Court has defined waiver as "the voluntary and knowing relinquishment of a right and may be shown by a course of conduct signifying a purpose not to stand on a right, and leading, by a reasonable inference, to the conclusion that the right in question will not be insisted upon." *Dep't of Human Servs.*,1998 ME 123 at ¶ 6.

[¶10] There is no Maine statute or case law that would support the use of these equitable doctrines by a Workers' Compensation Board ALJ.[2] Workers' compensation law in Maine is uniquely statutory in nature and equitable remedies are not available under the Act. *See Hird v. Bath Iron Works*, 512 A.2d 1035, 1037 (Me. 1986); *Doucette v. Hallsmith/SYSCO Food Services*, 2010 ME 138, ¶ 5, 10 A.3d 692; *Garrity v. Engineering Products*, Me. W.C.B. No. 15-29, ¶ 9 (App. Div. 2015). We find no error with respect to the ALJ's application of these principles.

D. 100% Partial Incapacity Benefit Award

[¶11] The Department contends that the ALJ erred when she awarded 100% partial incapacity benefits as of July 13, 2011, because the award allegedly includes the incapacity caused by a 1978 injury, any claim for which is barred by the statute of limitations and by Mr. Flanagin's non-work related injuries. The

[2] We do note, however, that it appears the Law Court may have previously applied equitable doctrines to workers' compensation law. In *Kidder v. Coastal Const. Co*., 342 A.2d 729 (Me. 1975), the Law Court created the apportionment doctrine despite the fact that the statute did not provide for apportionment.

Department argues that incapacity allegedly flowing from a 1978 injury has impermissibly made its way into the ALJ's decision regarding total incapacity.[3]

[¶12] The ALJ, however, directly addressed the issue of the alleged ongoing effects of the 1978 injury in a footnote:

> The employer argues that Mr. Flanagin also suffered from the ongoing effects of his 1978 date of injury. I find, however, that the previous Board decree is res judicata on this matter. The Board clearly identified the 1975 date of injury as the source of ongoing liability.

The ALJ's reliance on the 2002 decree to establish the source of Mr. Flanagin's ongoing incapacity was not legal error and is supported by competent evidence. Further, the 1978 injury has never been identified by the board in any of the decrees relevant to the issues herein as contributing to Mr. Flanagin's incapacity. At most, the 1978 injury was identified by the ALJ as one of several recurrent episodes of back pain that had its origin in the 1975 injury. We therefore find no error in the award of total incapacity benefits due to ongoing incapacity associated with the established 1975 injury.

III. CONCLUSION

[¶13] The Appellate Division's Decision in *Flanagin* is controlling on the statute of limitations issue raised again by the Department. Because equitable relief

[3] This contention stems from the ALJ's award of benefits for periods prior to July 13, 2011, whereby she awarded Mr. Flanagin varying rates partial benefits, capped at 25%, during the period of time that he continued working until he became totally incapacitated on July 13, 2011. The Department argues that the remaining 75% of Mr. Flanagin's ongoing incapacity is attributable to the barred 1978 injury, and therefore should be subject to an apportionment.

is not available under the Workers' Compensation Act, the Department's arguments regarding laches and waiver were properly rejected. Finally, there was competent evidence in the record to support the ALJ's decision regarding the ongoing incapacitating effects of the 1975 injury, and there was no legal error in her reliance on prior decrees that establish the 1975 injury as the source of Mr. Flanagin's ongoing incapacity.

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. 2016).

Attorney for Appellant:
Robert W. Bower, Jr., Esq.
NORMAN HANSON & DETROY
Two Canal Plaza
P.O. Box 4600
Portland, ME 04112-4600

Attorneys for Appellee:
James J. MacAdam, Esq.
Nathan A. Jury, Esq.
Donald M. Murphy, Esq.
MACADAM JURY, P.A.
45 Mallett Drive
Freeport, ME 04032