JOHN E. PARADIS
(Appellee)

v.

PINE STATE TRADING CO.
(Appellant)

and

MMTA WORKERS' COMPENSATION TRUST
(Insurer)

Argument held: September 21, 2016
Decided: April 27, 2017

PANEL MEMBERS: Administrative Law Judges Goodnough, Collier and Jerome
BY: Administrative Law Judge Jerome

[¶1] Pine State Trading appeals from a decision of a Workers' Compensation Board administrative law judge (*Knopf, ALJ*) granting John Paradis' Petitions for Award and for Payment of Medical and Related Services. Pine State Trading argues that the ALJ erred by finding a violation of Me. W.C.B. Rule, ch. 1, § 1, the "fourteen-day rule," and by failing to apply 39-A M.R.S.A § 201(5) (2001) to reduce benefits to reflect a subsequent nonwork-related injury. We find no error and affirm the ALJ's decision.

I. BACKGROUND

[¶2] John Paradis worked for Pine State Trading for eleven years. Mr. Paradis performed delivery work for Pine State, delivering beer, wine, and liquor.

Mr. Paradis suffered a work-related injury to his low back on August 19, 2011, while making a delivery. He was able to continue working for Pine State in his regular job with restrictions and a helper. In September of 2011, Mr. Paradis saw Dr. Kary for low back pain from the work injury, and also reported a hernia. In October of 2011, Mr. Paradis sought treatment for his low back injury and for kidney stones at Workplace Health, and missed a couple of days of work.

[¶3] A Notice of Controversy (NOC) was filed by Pine State on October 24, 2011, that stated "Question reason employee is losing time sporadically. Question non work related medical issues." The NOC was characterized as a "full denial". At the time that the NOC was filed, Mr. Paradis had made no claim for incapacity benefits. In January 2012, Mr. Paradis returned to a trial of regular duty status but his symptoms increased and he was put back under restrictions. On April 23, 2012, Pine State determined that it could no longer accommodate Mr. Paradis' work restrictions and laid him off.

[¶4] Mr. Paradis suffered a nonwork-related right knee injury in 2009 and continued to suffer problems with that knee in August of 2011. Those problems worsened over time and Mr. Paradis had a partial right knee replacement in June of 2012. According to his orthopedic surgeon, Mr. Paradis had an excellent recovery and his exam was completely normal as of January 2013. Dr. Donovan, the independent medical examiner appointed pursuant to 39-A M.R.S.A § 312 (Supp.

2016), opined that Mr. Paradis' ongoing incapacity was 50% due to his knee and 50% due to his back.

[¶5] On May 19, 2014, counsel for Mr. Paradis wrote a letter requesting total compensation benefits from the date of lay-off, April 23, 2012, to the present and continuing. Pine State Trading did not file a NOC or pay benefits but instead replied through its attorney that it had no obligation to file another NOC because it had earlier filed a full denial of claim in October of 2011.

[¶6] Petitions for Award and for Medical and Related Services were filed in June of 2014. The ALJ granted the Petition for Award, awarding total incapacity benefits from May 19, 2014, to the present and until the fourteen-day violation is cured, because Pine State did not pay the claim or file a NOC within fourteen days in compliance with Board Rule, ch. 1, § 1.[1] The ALJ also awarded Mr. Paradis a fixed rate of partial incapacity benefits based on an imputed earning capacity of $300 per week for the period after the lay off and before the request for benefits, and for the period after it cured the Board Rule 1.1 violation, to the present and continuing. The ALJ declined to reduce the benefit award on account of Mr. Paradis' nonwork-related knee condition because that condition preexisted his work injury and was therefore not a subsequent nonwork-related injury subject to

[1] The ALJ also granted Mr. Paradis' Petition for Medical and Related Services, but it is not the subject of this appeal.

apportionment pursuant to 39-A M.R.S.A § 201(5). Pine State thereafter filed a timely notice of appeal.

II. DISCUSSION

A. Standard of Review

[¶7] The role of the Appellate Division on appeal is "limited to assuring that the [ALJ]'s factual findings are supported by competent evidence, that [the] decision involved no misconception of applicable law and that 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) (quotation marks omitted). *See also Moore v. Pratt & Whitney Aircraft*, 669 A.2d 156, 158 (Me. 1995). When faced with a question of statutory interpretation, the Appellate Division first turns to the plain language of the statute and "construe[s] that language to avoid absurd, illogical or inconsistent results." *Estate of Joyce v. Commercial Welding Co*., 2012 ME 62, ¶ 12, 55 A.3d 411. We will look beyond a statute's plain meaning only "if the statutory language is ambiguous;" that is, "if it is reasonably susceptible to different interpretations." *Id.*

B. Application of Me. W.C.B. Rule, ch. 1, § 1

[¶8] Pine State Trading argues that the ALJ erred in finding a violation of Board Rule, ch. 1, § 1, the "fourteen-day rule," because it was not required to file an additional NOC after filing a full denial NOC in October of 2011.

[¶9] 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.

[¶10] The purpose of Board Rule, ch. 1, § 1 is to provide a prompt and efficient process for resolving disputes. *Bridgeman v. S. D. Warren*, 2005 ME 38, ¶ 14, 872 A.2d 961. An employer's failure to voluntarily pay benefits is "the triggering event for all subsequent proceedings to determine the compensability of an injury and to award benefits if benefits are due. The filing of a notice of controversy gives notice to the employee and the Board of an employer's intent to contest [the] claim." *Id.* Board Rule, ch. 1, § 1 and the board's dispute resolution process are designed to resolve specific claims. The filing of a protective NOC in the absence of a claim for benefits does not discharge an employer's future obligation under the fourteen-day rule.[2] *Cf. Parker v. Pepsico, Inc.* Me., W.C.B.

[2] Pine State cites *Pearson v. Freeport School Dept.,* 2006 ME 78, 900 A.2d 728, for the proposition that an employer is not required to file a new NOC if it would be "duplicative." *Pearson,* however, can be distinguished from the present case because the initial NOC filed by the employer was prompted by a

No. 15-16 (App. Div. 2015) (holding that Board Rule, ch. 1, § 1 is not limited to the first claim for benefits, but instead requires an employer to respond within fourteen days of notice or knowledge of a claim for incapacity or death benefits).

[¶11] In this case, there was no claim for benefits in October of 2011 and therefore no motivation on the part of Mr. Paradis to request mediation or to file a petition. The ALJ found that the first articulation of any claim for lost time benefits was set forth in the May 19, 2014, letter. This is a factual finding that cannot be disturbed on appeal. We find no error in the ALJ's determination that Pine State did not meet its obligation pursuant to Board Rule, ch. 1, § 1.

B. Subsequent Nonwork-Related Injury

[¶12] Pine State argues that the ALJ erred by failing to reduce incapacity benefits to reflect Mr. Paradis' ongoing right knee problems pursuant to section 201(5).[3]

[¶13] Section 201(5) provides:

> **Subsequent nonwork injuries.** If an employee suffers a nonwork-related injury or disease that is not causally connected to a previous compensable injury, the subsequent nonwork-related injury or disease is not compensable under this Act.

"claim" for benefits. In this case, there was no claim for benefits at the time the NOC was filed and thus it was not duplicative.

[3] Regarding incapacity, the ALJ concluded that "based on the work injury to his low back, Mr. Paradis is entitled to partial incapacity benefits." Thus, although the ALJ addressed Pine State's arguments with respect to the applicability of section 201(5), it appears that the finding of partial incapacity does not include any incapacity related to Mr. Paradis' preexisting right knee problem.

[¶14] Mr. Paradis suffered from a degenerative knee condition that preexisted his work injury and that gradually worsened over time. By the time of his work injury, Mr. Paradis had a severe arthritic loss of cartilage in his right knee. The ALJ found that the 2012 surgery addressed the preexisting knee problem. By its terms, section 201(5) provides that subsequent nonwork-related "injuries" or "diseases" are not compensable. The plain language of that section does not support the contention that "incapacity" related to a preexisting injury that worsens over time must be excluded from compensability. *See Pouzol v. L. Blanchette & Sons, Inc.*, Me. W.C.B No. 16-8 (App. Div. 2016) (holding that an arthritic shoulder condition that did not become disabling until after the work injury was not a subsequent nonwork-related injury). While the legislature could have chosen, as a matter of policy, to exclude gradually worsening conditions from compensability, it did not do so based upon the unambiguous language of section 201(5).[4] Thus, because the injury at issue preexisted the work injury, we find no error in the ALJ's refusal to reduce benefits in accordance with section 201(5).

The entry is:

The administrative law judge's decision is affirmed.

[4] Such an interpretation is potentially inconsistent with the plain language of 39-A M.R.S.A § 201(4) (2001), which specifically addresses work injuries which aggravate or combine with preexisting conditions and sets forth a standard for compensability in such situations.

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).

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