ALBERT F. JORDAN
(Appellee)

v.

BATH IRON WORKS
(Appellant)

and

AIG
(Insurer),

and

BATH IRON WORKS/SELF-INSURED
(Appellee)

Argued: January 25, 2017
Decided: March 29, 2018

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

[¶1] Bath Iron Works/insured by AIG ("AIG"), appeals from a decision of a Workers' Compensation Board administrative law judge (*Goodnough, ALJ*) granting Bath Iron Works/self-insured's ("BIW/self-insured") Petition for Order of Payment, and disallowing AIG from taking offsets for payments from pensions funded by Bath Iron Works ("BIW").

[¶2] AIG asserts that the ALJ erred by determining that it was not entitled to an offset pursuant to 39 M.R.S.A. § 62-B for benefits paid under employer-provided pension plans on the basis that BIW's contributions came after AIG's

period of coverage, and that AIG did not itself maintain or pay into the funds. Because we conclude that the ALJ misconstrued the applicable law, we vacate the decision.

I. BACKGROUND

[¶3] The facts are not in dispute. Mr. Jordan suffered two work-related back injuries during his tenure at BIW. The first occurred on February 17, 1987, when BIW was insured by AIG.[1] The second occurred on January 23, 2006, when BIW was self-insured. The board issued a decree on July 5, 2007, awarding Mr. Jordan 90% partial incapacity benefits for both injuries. The board assigned 90% responsibility to AIG and 10% to BIW/self-insured. As the second insurer, BIW/self-insured was ordered to pay Mr. Jordan the entire benefit and seek reimbursement from AIG for its share. *See* 39-A M.R.S.A. § 354 (2001).

[¶4] BIW maintained two pension funds during Mr. Jordan's tenure: the "BIW Pension" and the "IAM Pension." BIW funded the BIW Pension beginning some time in 1988. BIW joined the IAM Pension, which was entirely employer-funded, in 1994.[2] Mr. Jordan began receiving $964 per month from the IAM Pension in November of 2014. Thereafter, AIG began taking an offset under 39 M.R.S.A. § 62-B(3)(A)(2), which exceeded the amount it owed BIW/self-

[1] AIG was BIW's insurance carrier from September 1, 1986, until August 31, 1988. BIW became self-insured for workers' compensation on September 1, 1988.

[2] The ALJ concluded that AIG did not meet its burden to establish that it or BIW contributed to the BIW Pension during AIG's 1986–88 coverage period.

insured. AIG therefore stopped reimbursing BIW/self-insured for its share of Mr. Jordan's incapacity benefits. BIW/self-insured filed a Petition for Order of Payment, asking the board to order AIG to resume reimbursing BIW/self-insured without an offset.

[¶5] BIW/self-insured argued that AIG could not avail itself of an offset derived from a pension that BIW began funding after AIG's coverage period had ended. The ALJ agreed, reasoning that the offset for pension benefits is available only to employers who have contributed to the pension fund on an employee's behalf. Because the period of AIG's coverage was not coextensive with the period in which BIW funded either pension, the ALJ did not consider AIG a statutory employer in these circumstances, and denied the offset.

[¶6] AIG and Mr. Jordan filed Motions for Further Findings of Fact and Conclusions of Law, which the ALJ granted, issuing a revised decision that did not change the result with regard to the pension offset. AIG appealed.

II. DISCUSSION

[¶7] AIG contends that it was error to determine that an insurer is not entitled to take an offset for payments received by an employee under an employer-provided pension plan on the basis that the plan was not in effect during the insurer's period of coverage, and thus the insurer has no interest in the plan. We agree with this contention.

[¶8] AIG's right to take an offset against benefits due for Mr. Jordan's 1987 injury is governed by 39 M.R.S.A. § 62-B.[3] That section provides, in relevant part:

> **3. Coordination of benefits.** Benefit payments subject to this section shall be reduced in accordance with the following provisions.
>
> **A.** The employer's obligation to pay weekly compensation . . . shall be reduced by:
>
> . . . .
>
> **(2)** The after tax amount of the payments received or being received under an employee benefit plan provided by the same employer by whom [incapacity benefits] are payable if the employee did not contribute directly to the plan.

[¶9] Moreover, when an employer is insured, the Act defines the term "employer" to include "the insurer, self-insurer or group self-insurer unless the contrary intent is apparent from the context or is inconsistent with the purposes of this Act. 39-A M.R.S.A. § 102(12) (Supp. 2017); *see also* 39 M.R.S.A. § 2(1) (1989).

[¶10] The ALJ interpreted these provisions to disallow AIG from taking the offset, reasoning as follows:

> [I]n terms of determining which entity may take the IAM pension offset, AIG's interest must be viewed as an entity independent from its insured, BIW, during the 1986-1988 time frame.

[3] When it enacted the Workers' Compensation Act of 1992, the Legislature specified section 62-B as continuing to govern injuries occurring before January 1, 1993, notwithstanding the enactment of a replacement in 39-A M.R.S.A. § 221. *See* P.L. 1991, ch. 885, § A-10 ("With regard to matters in which the injury occurred prior to January 1, 1993, the applicable provisions of former Title 39 apply in place of Title 39-A, sections 211, 212, 213, 214, 215, *221*, 306 and 325." (Emphasis added)). Both provisions contain substantially similar language.

> That is because BIW did not begin to pay into the IAM pension plan until 1994, after it was self-insured, and fully six years after AIG's coverage terminated. AIG in the current litigation seeks only to advance its own interest, not the interest of the employer, BIW. A separation of the usual co-identity of employer and insurer is therefore warranted in this case.
>
> As noted above, AIG was never in a position to pay into the IAM pension in 1994 since it ceased covering BIW in 1988. BIW/Self-Insured, however, has had a direct hand in "maintaining" the fund since 1994. I therefore conclude that because AIG never maintained or paid into the fund as a putative employer, or insurer, it has zero interest in any potentially available offsets under the present Act, or under the prior Act. BIW/Self-Insured is the only entity that is entitled to the pension offset.

[¶11] When interpreting a statute, we first look to its plain language and "construe that language to avoid absurd, illogical or inconsistent results." *Estate of Joyce v. Commercial Welding Co.*, 2012 ME 62, ¶ 12, 55 A.3d 411 (quoting *Jordan v. Sears, Roebuck & Co.*, 651 A.2d 358, 360 (Me. 1994)). It is only necessary to look beyond a statute's plain meaning "if the statutory language is ambiguous;" that is, "if it is reasonably susceptible to different interpretations." *Id.* Because the Act generally includes insurers in its definition of "employer," the plain language of section 62-B affords AIG—as BIW's insurer—the right to an offset so long as neither the statutory context of section 62-B nor the purposes of the Act dictate that we draw a distinction between BIW and its insurer.

[¶12] Neither compels such a distinction. The purpose of section 62-B was to "ensure a minimum income during the period of an employee's incapacity and to prevent a double recovery of both retirement and compensation benefits." *See*

Berube v. Rust Eng'g, 668 A.2d 875, 877 (Me. 1995); *Soper v. St. Regis Paper Co.*, 411 A.2d 1004, 1009 (Me. 1980). The Legislature enacted the provision as part of a reform effort to prevent insurers from leaving the state. *Jordan*, 651 A.2d at 361. Allowing AIG to take an offset for Mr. Jordan's pension furthers the purposes of the coordination of benefits provision. It would prevent double recovery by Mr. Jordan while insuring a minimum income, and reduce the overall cost of workers' compensation benefits to employers and insurers.

[¶13] BIW/self-insured argues that we should recognize a legal distinction between BIW and AIG for purposes of section 62-B because their interests are adverse. But there is no statutory basis for making adversity the test for whether an insurer does or does not stand in the shoes of the employer. Indeed, to do so would yield arbitrary results. Under such a test, if BIW had switched to a different insurance carrier in 1988 rather than self-insuring, AIG and BIW would not be competing for the offset; there would be no adversity and no basis for denying AIG its ability to take an offset under section 62-B. Yet in the circumstances of this case, such a test would deny AIG an offset by virtue of BIW's choice to become self-insured.

[¶14] Although our interpretation of section 62-B allows AIG to reap the benefit of an offset that arises by virtue of BIW's funding Mr. Jordan's pension, such an outcome is fully within the legislative design of section 62-B. In ordinary

cases, when an insured employer contributes to an employee's pension, section 62-B operates to give the benefit of whatever offset results to the responsible insurer.

The entry is:

> The administrative law judge's decision is vacated, and BIW/self-insured's Petition for Order of Payment is denied.

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. 2017).

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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