KEVIN RAMSEY
(Appellee)

v.

SHAW'S SUPERMARKETS, INC.
(Appellant)

and

SEDGWICK CLAIMS MANAGEMENT SERVICES
(Administrator)

Conference held: December 5, 2019
Decided: April 21, 2021

PANEL MEMBERS: Administrative Law Judges Hirtle, Knopf, and Pelletier
BY: Administrative Law Judge Hirtle

[¶1] Shaw's Supermarkets appeals from a decision of a Workers' Compensation Board administrative law judge (*Goodnough, ALJ*) granting Kevin Ramsey's Petitions for Award and for Payment of Medical and Related Services regarding an August 22, 2017, injury. The ALJ awarded protection of the Act for a gradual bilateral knee injury after determining that Mr. Ramsey had complied with the notice requirements of 39-A M.R.S.A. §§ 301 and 302 (Pamph. 2020). Shaw's contends that this constitutes reversible error because the record contains no competent evidence to meet Mr. Ramsey's burden of proof of a mistake of fact that would extend the 30-day notice period.[1] We agree and vacate the decision.

[1] Shaw's Supermarkets also argues that it was reversible error to find that Mr. Ramsey's bilateral knee condition is work-related, but we find no reversible error in the ALJ's determination regarding causation.

I. BACKGROUND

[¶2] Kevin Ramsey was a long-term employee of Shaw's Supermarkets. His job duties mainly involved stocking shelves, which required frequent bending and kneeling. During the five years leading up to his injury, Mr. Ramsey worked as a grocery manager but still spent a significant portion of his workday stocking shelves. Over the years, he experienced pain in both knees that worsened progressively.

[¶3] On August 22, 2017, Mr. Ramsey saw his primary care physician, at which time Mr. Ramsey questioned whether his work had caused his knee symptoms. The primary care physician did not issue a causation opinion responsive to that question until December 1, 2017. On November 3, 2017, Mr. Ramsey was seen by Shaw's chosen medical provider, who assessed his bilateral knee condition as work related. Mr. Ramsey notified Shaw's of his injury on November 3, 2017.

[¶4] In April 2018, Mr. Ramsey filed petitions seeking workers' compensation benefits related to his bilateral knee injury. During the litigation, Shaw's asserted that Mr. Ramsey's claim should be denied because he did not provide notice within the prescribed 30-day period. *See* 39-A M.R.S.A. §§ 301, 302. Mr. Ramsey did not testify that he was under a mistake of fact regarding the cause and nature of his bilateral knee pain. The ALJ nevertheless found that Mr. Ramsey was under such a mistake of fact until he was given a medical opinion regarding the

compensable nature of his knee condition on November 3, 2017. The ALJ concluded that notice of the injury given on that date was timely.

[¶5] Shaw's filed a Motion for Additional Findings of Fact and Conclusions of Law, which the ALJ denied. This appeal followed.

II. DISCUSSION

[¶6] 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). Because Shaw's 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 Indus., Inc.*, 2002 ME 134, ¶ 17, 803 A.2d 446.

[¶7] An injured employee under the Workers' Compensation Act with a 2017 date of injury has 30 days from that date to provide notice of the injury to the employer. 39-A M.R.S.A. § 301.[2] Once an employer raises the issue of notice, the

[2] The Legislature amended title 39-A M.R.S.A. § 301 after the date of Mr. Ramsey's injury. *See* P.L. 2019, ch. 344, § 13.

employee bears the burden of persuasion to demonstrate that timely notice was provided. *Boober v. Great N. Paper Co.*, 398 A.2d 371, 373-74 (Me. 1979).

[¶8] "Any time during which the employee is unable … to give the notice or fails to do so on account of mistake of fact, may not be included in the computation of proper notice." 39-A M.R.S.A. § 302. The notice period is tolled under section 302 "when an injury, or its cause, is not recognized due to a mistake of fact." *Jensen v. S.D. Warren Co.*, 2009 ME 35, ¶ 17, 968 A.2d 528; *Pino v. Maplewood Packing Co.*, 375 A.2d 534, 537 (Me. 1977).

> The exception applies in "those situations where the injury is latent or its relation to the accident unperceived [, and does] not include instances where . . . the employee knows of the injury and its cause." *Id*. "A mistake of fact takes place either when some fact which really exists is unknown or some fact is supposed to exist which really does not exist." *Brackett's Case*, 126 Me. 365, 368, 138 A. 557, 558 (1927) (quotation marks omitted). The filing and notice periods are tolled because "when there is [a] 'mistake of fact as to the cause and nature of the injury,' it would be unfair to bar the claim because the employee is unaware of it." *Pino,* 375 A.2d at 537.

Jensen, 2009 ME 35, ¶ 17.

[¶9] Shaw's argues that the ALJ erred by tolling the notice period due to a mistake of fact because Mr. Ramsey provided no evidence that he was under a mistake as to the cause and nature of his bilateral knee symptoms. Shaw's argues that the ALJ's focus on when medical records first suggested a work connection was misplaced because the relevant issue is Mr. Ramsey's lack of knowledge or mistake regarding the cause of his symptoms.

[¶10] Mr. Ramsey argues that the ALJ "essentially found as a fact that Mr. Ramsey was under a mistake of fact as to the cause of his bilateral knee problems until November 3, 2017" and points to the absence of a medical causation opinion until that date as competent evidence to support this factual finding. Mr. Ramsey further argues that because the record contains differing medical opinions on this causation question, knowledge of whether the condition is work related should not be imputed to Mr. Ramsey.

[¶11] Having thoroughly reviewed the evidentiary record in this case, we find no competent evidence to support the ALJ's factual finding that Mr. Ramsey was under a mistake of fact as to the cause and nature of his injury until November 3, 2017. Mr. Ramsey himself did not testify that he was mistaken; nor did he testify as to when or how he came to understand that his injury was work related. There is no other evidence that would support a finding that Mr. Ramsey did not perceive the injury as work-related, or that Mr. Ramsey wrongfully perceived something as fact that would have impeded a correct understanding.

[¶12] The ALJ inferred that Mr. Ramsey was under a mistake of fact until November 3, 2017, because that is the first time a medical opinion was issued that directly relates the injury to Mr. Ramsey's work duties. "[W]here the [ALJ] has relied upon an inference to reach a conclusion we are obligated to review [the ALJ's] reasoning to determine whether the evidence permits such an inference to be drawn."

Murray v. T.W. Dick Co., 398 A.2d 390, 392 (Me. 1979). The ALJ's reasoning, based on the absence of a medical opinion on causation, does not permit an inference that Mr. Ramsey was mistaken as to the cause and nature of his knee condition.

[¶13] It was Mr. Ramsey's burden to come forward with evidence to establish that he was under a mistake of fact that caused him to delay reporting the injury beyond the 30-day notice period. In this case, he offered no competent evidence to support the ALJ's finding of such a mistake of fact. Accordingly, the ALJ's finding of adequate notice must be vacated and Mr. Ramsey's petitions denied.

III. CONCLUSION

[¶14] Because the record does not contain competent evidence to support the ALJ's finding of a mistake of fact and adequate notice under 39-A M.R.S.A. §§ 301 and 302, it was reversible error to grant Mr. Ramsey's petitions.

The entry is:

> The administrative Law Judge's decision is vacated, and the petitions are 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 (Pamph. 2020).

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.

Attorney for Appellant:
Katlyn M. Davidson, Esq.
NORMAN, HANSON & DeTROY
Two Canal Plaza
P.O. Box 4600
Portland, ME 04112-4600

Attorney for Appellee:
Christopher J. Cotnoir, Esq.
WCB Advocate Division
71 State House Station
Augusta, ME 04333-0071