

ESTATE OF J. MICHAEL BOYLE, SR., and FAYE BOYLE
(Appellants)

v.

LAPPIN BROTHERS, INC.,
(Appellee)

and

ACE INSURANCE CO.
(Insurer)

Argued: February 10, 2021
Decided: May 26, 2022

PANEL MEMBERS: Administrative Law Judges Stovall, Chabot, and Pelletier
BY: Administrative Law Judge Stovall

[¶1] The Estate of Michael Boyle and Faye Boyle (the Estate) appeal decisions from a Workers' Compensation Board administrative law judge (*Elwin, ALJ*), determining that Lappin Brothers is not responsible for payment of death benefits or medical bills related to Mr. Boyle's asbestos-related disease because of a third-party lien that exceeded the amount to which Mr. Boyle would have otherwise been entitled under the Workers' Compensation Act. *See* 39-A M.R.S.A. § 107. The Estate contends that the ALJ committed legal error in determining that Lappin Brothers was entitled to an offset due to the third-party settlement. We affirm the judgment.

I. BACKGROUND.

[¶2] On November 8, 1977, Mr. Boyle sustained a work-related back injury that disabled him. He was paid total incapacity benefits from the date of that injury until his death on June 27, 2010.

[¶3] Mr. Boyle was diagnosed with mesothelioma in April of 2009, caused by exposure to asbestos. He was exposed to asbestos while working for multiple employers over his career as a union pipefitter. Under the Workers' Compensation Act, "the only employer and insurance carrier liable [for asbestos related disease] is the last employer in whose employment the employee was last injuriously exposed to asbestos, and the insurance carrier, if any, on the risk when the employee was last so exposed under that employer." 39-A M.R.S.A. § 614(4). In a previous round of litigation, Mr. Boyle's last injurious exposure was determined (*Greene, HO*) to have occurred in 1977 while he was employed by Lappin Brothers, working with an asbestos product called Duriron. This determination was affirmed by a panel of the Appellate Division, and the case remanded for a determination of the remaining issues in the case. *Estate of Boyle v. Lappin Bros.*, Me. W.C.B. No. 19-7 (App. Div. 2017).

[¶4] On November 5, 2019, the board (*Elwin, ALJ*) issued two decrees: A Final Amended Decision on Remand, and a Decision on Petition for Payment of Medical and Related Services. The ALJ determined that Mr. Boyle died due to

mesothelioma caused by workplace exposure to asbestos, and that the claimed medical expenses were reasonable and necessary. However, the ALJ further determined that Lappin Brothers has no further obligation to the Estate or Ms. Boyle for medical expenses, indemnity benefits, death benefits, or interest because (1) Mr. Boyle had been paid all incapacity benefits to which he was entitled through the date of his death; (2) the Estate has received third-party settlement proceeds that exceed the amount of Lappin Brothers' potential liability under the Act; and (3) Lappin Brothers has a lien against the settlement proceeds coextensive with its liability under the Act, 39-A M.R.S.A. § 107.

[¶5] The Estate appeals. Lappin Brothers initially filed a cross appeal, which it later withdrew without objection from the Estate. The cross appeal was dismissed on January 12, 2022. Me. W.C.B. Rule, ch. 13, § 3(5)(A).

II. DISCUSSION

A. Standard of Review

[¶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). The Appellate Division will not disturb a factual finding made by the ALJ absent a showing that it

lacks competent evidence to support it. *Dunkin Donuts of Am., Inc. v. Watson*, 366 A.2d 1121, 1125 (Me. 1976).

[¶7] “When construing provisions of the Workers’ Compensation Act, our purpose is to give effect to the Legislature’s intent.” *Hanson v. S.D. Warren Co.*, 2010 ME 51, ¶ 12, 997 A.2d 730. “In so doing, we first look to the plain meaning of the statutory language, and construe that language to avoid absurd, illogical, or inconsistent results.” *Id.*

B. Title 39-A M.R.S.A. § 107

[¶8] The Estate argues that under 39-A M.R.S.A. § 107, Lappin Brothers has no lien because the Estate obtained the third-party recovery from sources other than Duriron (the company that manufactured the asbestos Mr. Boyle was exposed to while employed by Lappin Brothers) that were unrelated to Mr. Boyle’s employment with Lappin Brothers. The Estate further contends that because Lappin Brothers did not exercise its subrogation rights against Duriron, it forfeited its lien against the recovery from other sources.

[¶9] Lappin Brothers asserts that the Estate’s arguments are based on a false premise and claims the Estate did, in fact, pursue Duriron’s successor in third-party litigation. The ALJ made no factual finding in this regard. However, whether Duriron was a defendant in a third-party action is of no consequence because we do

not construe section 107 to be limited in the manner the Estate suggests. Section 107 reads, in relevant part:

Liability of 3rd persons; election of employee; subrogation

When an injury or death for which compensation or medical benefits are payable under this Act is sustained under circumstances creating in *some person* other than the employer a legal liability to pay damages, the injured employee may, at the employee's option, either claim the compensation and benefits or obtain damages from or proceed at law against that other person to recover damages.

If the injured employee elects to claim compensation and benefits under this Act, any employer having paid the compensation or benefits or having become liable for compensation or benefits under any compensation payment scheme has a lien for the value of compensation paid on any damages subsequently recovered against the 3rd person liable for the injury. If the employee or the employee's beneficiary fails to pursue the remedy against the 3rd party within 30 days after written demand by the employer, the employer is subrogated to the rights of the injured employee and is entitled to enforce liability in its own name or in the name of the injured party, the accounting for the proceeds to be made on the basis provided.

39-A M.R.S.A. § 107 (emphasis added).

[¶10] Section 107 gives the employer a lien when “some person” other than the employer is legally liable for the employee's injury. *See McKeeman v. Cianbro Corp.*, 2002 ME 144, ¶ 5, 804 A.2d 406. We find no support in the plain language of section 107 for limiting the employer's lien only to asbestos manufacturers or sellers that were involved with the employee's last injurious exposure. While it is true that under the Maine Workers' Compensation Act, only the employer or insurer on the last injurious exposure is the legal source of compensation for injury, 39-A

M.R.S.A. § 614, that does not negate the fact that an employee's exposure to asbestos from other sources can make those others *legally liable* to pay damages for that injury. Moreover, although section 107 *entitles* an employer to pursue a third party who may be liable due to the last injurious exposure, no language in section 107 requires an employer to pursue that third party at the risk of forfeiting its lien against other settlement proceeds.

[¶11] Finally, the Estate invites the Appellate Division to comment on a post-decree dispute regarding payment of attorney's fees. Because that issue is not before this panel, we decline that invitation.

III. CONCLUSION

[¶12] The ALJ committed no error of law in determining pursuant to section 107 that Lappin Brothers has a lien against third-party settlement proceeds recovered by the Estate to the extent of its liability under the Act.

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.

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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