ESTATE OF RALPH ZEITMAN et al.
(Appellant)

v.

W.W. OSBORNE,
O'CONNOR CONSTRUCTORS, INC.,
BABCOCK & WILCOX,
COMMERCIAL WELDING, and
WADE & SEARWAY CONSTRUCTION
(Appellees)

and

NATIONAL FIRE INSURANCE OF HARTFORD,
CNA, AIG, NATIONAL UNION FIRE INSURANCE CO.,
LIBERTY MUTUAL INSURANCE CO.,
HANOVER INSURANCE CO., ESIS,
PACIFIC EMPLOYERS' INSURANCE CO., and
TRAVELERS INDEMNITY CO.
(Insurers)

Conference held: March 19, 2014
Decided: January 13, 2015

PANEL MEMBERS: Hearing Officers Jerome, Goodnough, and Stovall
BY: Hearing Officer Goodnough

[¶1] The Estate of Ralph Zeitman and Marjorie Zeitman (collectively, "the Estate") appeal from a decision of a Workers' Compensation Board hearing officer (*Collier, HO*) granting the Employers' Motions to Dismiss the Estate's Petitions for Award-Occupational Disease Law-Fatal and for Award-Occupational Disease

Law, on statute of limitations grounds. *See* 39 M.R.S.A. § 95 (Supp. 1990).[1] The Estate contends that the hearing officer erred when, despite taking as true that Ms. Zeitman was under a mistake of fact as to the cause and nature of the illness until shortly before the Estate filed the petitions, the hearing officer determined that the claims were barred because they were not filed within a "reasonable time" of Mr. Zeitman's illness and death. Because we conclude that the reasonable time to file the petitions began after Ms. Zeitman became aware that the illness and death were work-related, we vacate the hearing officer's decision and remand for further proceedings.

I. BACKGROUND

[¶2] The Estate filed its petitions on April 21, 2011, against W.W. Osborne, O'Connor Constructors, Inc., Babcock & Wilcox, Commercial Welding Co., and Wade & Searway Construction ("the Employers"). The Employers filed answers to the petitions and asserted various affirmative defenses, including a statute of limitations defense. Thereafter, the Employers jointly filed a Motion to Dismiss, in which they requested that the petitions be dismissed on statute of limitations grounds. The Employers also requested that the proceedings be bifurcated to address the motion to dismiss before holding a hearing on the other issues in the

[1] Title 39 M.R.S.A. § 95 (Supp. 1990) was amended in 1991, P.L. 1991, ch. 615, § A-44 (effective Oct. 17, 1991), and then repealed and replaced by P.L. 1991, ch. 885, §§ A-7, A-8 (effective Jan. 1, 1993) codified at 39-A M.R.S.A § 306 (Supp. 2014). Section 306 has been amended several times since 1993, most recently by P.L. 2011, ch. 647, § 18 (effective Aug. 30, 2012).

case. At a conference of counsel, it was agreed that the hearing officer would decide the statute of limitations question first.[2]

[¶3] For the purpose of deciding the statute of limitations issue, the hearing officer assumed the following facts to be true:

- Mr. Zeitman was diagnosed with lung cancer in 1991.
- Mr. Zeitman became incapacitated and left work as a result of this illness in March of 1991.
- Mr. Zeitman did not work again, and he died from lung cancer on April 18, 1999.
- Marjorie Zeitman filed these petitions on April 21, 2011.
- No employer filed a First Report of Injury until after the petitions were filed.
- No employer has paid any workers' compensation benefits of any kind to Mr. or Ms. Zeitman as a result of this illness.
- Ms. Zeitman was under a mistake of fact as to the cause and nature of her husband's illness and promptly filed the petitions after she discovered the mistake.

[¶4] The hearing officer applied 39 M.R.S.A. § 95 to these facts, and determined that the petitions were barred by the statute of limitations because the petitions, filed twenty years after Mr. Zeitman was diagnosed with cancer and twelve years after he died, were not filed within a reasonable time despite Ms.

[2] The Estate contends that the bifurcated procedure used by the hearing officer contravened the Act and deprived it of a hearing on the merits of its case. However, (1) the record indicates that the Estate agreed to the bifurcation; and (2) nothing in the Act prohibits a hearing officer from addressing a potentially dispositive legal issue before hearing evidence in a case.

Zeitman's mistake of fact. The Estate and the Employers filed Motions for Additional Findings of Fact and Conclusions of Law, which the hearing officer denied. The Estate then filed this appeal.

II. DISCUSSION

[¶5] The Estate contends that the hearing officer erred by interpreting section 95 to allow for its claims to be extinguished before Ms. Zeitman became aware of the claim. The Estate asserts that the "reasonable time" provided for in the statute begins to run after the claimant is no longer under a mistake of fact and becomes aware of the nature and cause of the injury. We agree with the Estate's contention.

[¶6] Addressing this issue requires us to construe the language of section 95. In construing a provision of the Workers' Compensation Act, the Appellate Division's purpose is to give effect to the legislative intent. *Jordan v. Sears, Roebuck & Co.*, 651 A.2d 358, 360 (Me. 1994). The panel first looks to the plain meaning of the statutory language, and construes that language to avoid absurd, illogical, or inconsistent results. *Id.* If the statutory language is ambiguous, the panel looks beyond the plain meaning and examines other indicia of legislative intent, including legislative history. *Id.*

[¶7] The purpose of the Workers' Compensation Act's statute of limitations "is to reconcile an injured party's interest in compensation with the employer's

interest in a terminal date to litigation." *Hird v. Bath Iron Works*, 512 A.2d 1035, 1036-37 (Me. 1986); *see also Pino v. Maplewood Packing Co*., 375 A.2d 534, 537 (Me. 1977). The general purpose of statutes of limitations is "to provide eventual repose for potential defendants and to avoid the necessity of defending stale claims." *Langevin v. City of Biddeford*, 481 A.2d 495, 498 (Me. 1984).

[¶8] The Estate's claims are governed by the statute of limitations in effect at the time of the injury, 39 M.R.S.A. § 95 (Supp. 1990).[3] Section 95 provides:

> Any employee's claim for compensation under this Act shall be barred unless an agreement or petition . . . shall be filed within 2 years after the date of the injury, or, if the employee is paid by the employer or the insurer, without the filing of any petition or agreement, within 2 years of any payment by such employer or insurer for benefits otherwise required by this Act. The 2-year period in which an employee may file a claim does not begin to run until the employee's employer, if the employer has actual knowledge of the injury, files a first report of injury as required by section 106 of the Act. . . . If the employee failed to file the petition within that period because of mistake of fact as to the cause and nature of the injury, the employee may file the petition within a reasonable time. In the case of the death of the employee, there shall be allowed for filing said petition one year after that death. No petition of any kind may be filed more than 10 years following the date of the latest payment made under this Act. For the purposes of this section, payments of benefits made by an employer or insurer pursuant to section 51-B or 52 shall be considered payments under a decision pursuant to a petition, unless a timely notice of controversy has been filed.

[3] *See, e.g., Leighton v. S.D. Warren Co.*, 2005 ME 111, ¶ 1, 883 A.2d 906 (applying 39 M.R.S.A. § 95 (Supp. 1982) to 1983 date of injury); *see also* P.L. 1991, ch. 885, § A-10 (expressly making the statute of limitations provision in the new Act non-retroactive). The date of injury in this case is determined pursuant to section 606 of the Occupational Disease Law, which defines the date of injury as the date on which the "employee becomes incapacitated by an occupational disease." 39-A M.R.S.A. § 606 (Supp. 2014). Because Mr. Zeitman was diagnosed with lung cancer and stopped working in March of 1991, his date of injury is March 1991, and the Estate's claims are governed by 39 M.R.S.A. § 95 (Supp. 1990).

[¶9] The Occupational Disease Law is also relevant to the analysis. Title 39-A M.R.S.A. § 607 (2001) generally aligns the notice and claims periods provided therein with those set forth in 39-A M.R.S.A. §§ 301 through 306 of the Act. Section 607, however, also sets an outside limit for the payment of certain non-asbestos Occupational Disease Law claims. It provides:

> After compensation payments for an occupational disease have been legally discontinued, claim[s] for further compensation for that occupational disease not due to further exposure to an occupational hazard tending to cause that disease are barred if not made within one year after the last previous payment.

39-A M.R.S.A. § 607 (2001). In asbestos cases, however, the Law provides for a lengthier repose period. It states:

> Notwithstanding section 607, after compensation payments for incapacity or death caused by an asbestos-related disease have been legally discontinued, a claim for further compensation for that disease not due to further exposure to asbestos in that employment is barred if not made within 40 years of the last previous payment.

39-A M.R.S.A. § 614(6) (2001); *see also* 39 M.R.S.A. § 194-B(7) (1989) (prior version of the statute containing same language). This provision essentially acknowledges the long latency period inherent in asbestos exposure cases and the uncertainty associated with the consequences of that exposure. *See generally*, 2 Legis. Rec. H-989 (First Reg. Session 1983).

[¶10] The hearing officer was therefore faced with reconciling the interest in protecting employers against stale claims with the apparent intent to provide

compensation to asbestos victims despite the unusually long latency period after exposure.

[¶11] The hearing officer properly concluded that the applicable statute of limitations is the two-year period found in section 95. Because the Estate's Petitions were filed more than two years after the date of injury—well after the limitations period expired—the petitions remain viable if the Estate is able to prove an exception to the filing deadline provided for in section 95; that is, that the Estate "failed to file the petition within [the 2-year] period because of a mistake of fact as to the cause and nature of the injury," and the Estate filed "the petition within a reasonable time." *Id.*

[¶12] Although the hearing officer concluded that neither the ten-year period in section 95 nor the forty-year period in section 614(6) applies because no incapacity benefit payments had been previously paid on the claims, he nevertheless looked to those provisions for legislative guidance in order to resolve the wholly unrelated issue of whether the Estate filed its petitions, assuming a mistake of fact, within a "reasonable time."

[¶13] The hearing officer took as true that the Estate promptly filed its petitions after Ms. Zeitman discovered that she had been mistaken as to the cause and nature of Mr. Zeitman's illness and death. The hearing officer nevertheless found that the filing was not made "within a reasonable time." The hearing officer

viewed the ten-year period provided for in section 95 as best representing the Legislature's conception of a "reasonable time," and measured that period from the date of injury (1991) and date of death (1999), both well in excess of ten years before the filing of the current petitions.

[¶14] It has long been the law in Maine, however, and in the vast majority of jurisdictions around the country, that when a claimant is operating under a mistake of fact, "reasonableness" is measured not from the date of injury but from when the claimant becomes aware of the cause and nature of the injury. *See Crawford's Case*, 127 Me. 374, 376, 143 A. 464 (1928) (holding late notice is excused "provided that notice is given within a reasonable time after the latent injury becomes apparent"); *see also Francis v. H. Sacks & Sons*, 160 Me. 255, 259, 203 A.2d 42, 44 (1964) (same); *Jensen v. S.D. Warren Co.*, 2009 ME 35, ¶ 26, 968 A.2d 528 (holding that the statute of limitations for a gradual injury begins to run when a claimant operating under a mistake of fact becomes aware of the compensable nature of the injury); 7 Arthur Larson & Lex K. Larson, LARSON'S WORKERS' COMPENSATION LAW § 126.05 [1] (2013) ("The time period for notice or claim does not begin to run until the claimant, as a reasonable person, should recognize the nature, seriousness, and probable compensable character of his or her injury or disease.").

[¶15] Evaluating reasonableness with reference to the alleged date of injury serves to defeat the purpose of the mistake of fact exception to the statute of limitations. As the Law Court has said, the "legislative motivation is readily apparent—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*." *Dunton v. Eastern Fine Paper Co.*, 423 A.2d 512, 517 (Me. 1980) (quoting *Pino v. Maplewood Packing Co.*, 375 A.2d 534, 537 (Me. 1977)). We agree that it is only after the claimant is no longer under a mistake of fact that the statute of limitations begins to run and from that point does the claimant have a reasonable time to file a petition.[4]

[¶16] Accordingly, based on the facts that were taken as true by the hearing officer, the conclusion that the Estate's claims are barred by the statute of limitations was erroneous.

III. CONCLUSION

[¶17] The hearing officer's decision is vacated and the case is remanded for further proceedings. The facts that were assumed for purposes of the Motion to Dismiss must now be determined by the hearing officer after a hearing. If the hearing officer determines that there was a legitimate mistake of fact as to the

[4] Because we conclude that when a claimant has been operating under a mistake of fact, the reasonable period for filing a petition is gauged in relation to the claimant's awareness of the cause and nature of the injury, and because the hearing officer assumed that the Estate filed its petitions promptly after becoming aware, we find it unnecessary to decide whether the ten or forty-year statutory periods should be ever used as guidance when assessing reasonableness.

cause and nature of the illness and death, and the petitions were filed promptly thereafter, the case can go forward on the remaining issues.

The entry is:

> The hearing officer's decision is vacated and the case remanded for proceedings consistent with this decision.

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. 2014).

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