ROBERT J. PARKER
(Appellee)

v.

PEPSICO, INC. (FRITO-LAY)
(Appellant)

and

SEDGWICK CLAIMS MANAGEMENT, INC.
(Insurer)

Argued: July 23, 2014
Decided: May 27, 2015

PANEL MEMBERS: Hearing Officers Elwin, Collier, and Goodnough
BY: Hearing Officer Elwin

[¶1] Pepsico, Inc. (Frito-Lay) appeals from the decision of a hearing officer (*Jerome, HO*) awarding Mr. Parker total incapacity benefits from February 3, 2012, through December 11, 2013, based on Frito-Lay's violation of the "fourteen-day rule," Me. W.C.B. Rule, ch. 1, § 1. The sole issue on appeal is whether Frito-Lay had a duty to file a notice of controversy (NOC) within fourteen days of Mr. Parker's filing of his Petition for Restoration, when it had previously filed an uncontested, 21-day notice of discontinuance on the same date of injury. *See* 39-A M.R.S.A. § 205(9) (Supp. 2014). We affirm the hearing officer's decision.

I. BACKGROUND

[¶2] Mr. Parker worked for Frito-Lay as a route sales driver from 1989 until 2006. He suffered a compensable injury to his low back on August 21, 2000. After surgery and several months out of work, Mr. Parker returned to his regular job at Frito-Lay.

[¶3] Mr. Parker claimed that he suffered a second work injury to his low back and neck on April 28, 2006. Frito-Lay had voluntarily paid Mr. Parker total incapacity benefits on this date of injury until September 2008, when it filed a 21-day Certificate of Discontinuance pursuant to 39-A M.R.S.A. § 205(9)(B)(1). Mr. Parker did not challenge this discontinuance, which became effective September 26, 2008. He continued to receive total incapacity benefits on account of his August 21, 2000, work injury until approval of a lump sum settlement of that injury in October, 2011.

[¶4] Mr. Parker filed his Petition for Restoration on the 2006 date of injury. The hearing officer found that the medical evidence did not support this claim, and Mr. Parker has not appealed this finding. Nevertheless, the hearing officer concluded that Frito-Lay failed to comply with W.C.B. Rule, ch. 1, § 1, which requires an employer to pay or controvert a claim within fourteen days of notice or knowledge of that claim. Mr. Parker filed his Petition on February 3, 2012, and Frito-Lay filed its NOC more than fourteen days later. Because Frito-Lay did not

file a timely NOC, and did not otherwise cure its fourteen-day violation, the hearing officer ordered Frito-Lay to pay Mr. Parker total incapacity benefits from February 3, 2012 (the date he made a claim for benefits by filing his Petition for Restoration), until December 11, 2013 (the date of the decision).

[¶5] Frito-Lay filed its Motion for Additional Findings of Fact and Conclusions of Law, which the hearing officer denied. Frito-Lay now appeals.

II. DISCUSSION

[¶6] Frito-Lay contends that the hearing officer erred when determining that it was obligated to file a NOC after Mr. Parker filed his Petition for Restoration on February 3, 2012. Because it made its first payment within fourteen days of notice of that injury pursuant to 39-A M.R.S.A. § 205(2) (Supp. 2014), and later sent a 21-day certificate of discontinuance pursuant to section 205(9), Frito-Lay argues that it met its obligations and adequately informed Mr. Parker of its intent to dispute any claim regarding the alleged 2006 date of injury. Frito-Lay further asserts that requiring a NOC in response to a petition for restoration regarding the same date of injury would be redundant, citing *Pearson v. Freeport Sch. Dep't*, 2006 ME 78, 900 A.2d 728. We disagree.

[¶7] The Appellate Division's role on appeal is "limited to assuring that the [hearing officer's] . . . 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 hearing officer's findings of fact are not subject to appeal. 39-A M.R.S.A. § 321-B(2) (Supp. 2014).

[¶8] Me. W.C.B. Rule Ch. 1, § 1 provides:

> 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.

[¶9] In *Pearson*, the employee had filed two petitions for award citing two dates of injury. 2006 ME 78, ¶ 5, 900 A.2d 728. The employer had filed a timely NOC within fourteen days of notice of a claim related to one asserted date of injury, but not the other. *Id.* The hearing officer determined that the employer had not violated the fourteen-day rule because the two alleged injuries were in fact "one and the same" and constituted "one continuum" of the same injury; thus it was clear that the employer was controverting the entire claim. *Id.* ¶ 6. The Law Court affirmed, reasoning:

> The hearing officer's factual finding that there was only one continuous injury is final and not subject to appellate review. *See* 39-A M.R.S. § 318 (2005). Because there was only one continuing

> injury, the School Department's first notice of controversy filed in January 2003 was compliant with the fourteen-day rule, and the School Department's second notice of controversy filed in November 2003 was redundant of the earlier notice and not required. The notice of controversy filed in January 2003 fulfilled its purpose of "giv[ing] notice to the employee and to the Board of an employer's intent to contest a claim," *Bridgeman* [*v. S.D. Warren Co.*], 2005 ME 38, ¶ 14, 872 A.2d at 965, as evidenced by the fact that by the time Pearson's petition was filed, her claim had already proceeded through the mediation phase of the workers' compensation process that had been initiated in response to the School Department's filing of the notice. *See* 39-A M.R.S. § 313 (2005).

Id. ¶ 13.

[¶10] In this case, the hearing officer rejected Frito-Lay's argument that similarly, a NOC filed in response to the 2012 Petition for Restoration would have been redundant of the 2008 discontinuance letter. She reasoned:

> The assertion that a 21-day suspension obviates the need to file a NOC in response to a claim for benefits made almost three years later is not supported by the language of W.C.B. Rule, ch. 1, § 1 nor is it supported by any case law. This is not a case where the issue is a *redundancy* in the filing of NOC's. *Pearson v. Freeport School Dept.*, 900 A.2d 728 (Me. 2006); *Kelly Thompson v. Hannaford Brothers*, 2007 WL 6066546 (Me. WCB 2007). Unlike the *Pearson* case, the Employer in this case did not file a NOC, it filed a 21-day discontinuance. Unlike *Pearson*, there was no immediate mediation of the controversy, because a 21-day suspension does not prompt mediation absent the employee's request for review. The Employee did not file a Petition for Review after the 2008 suspension.

[¶11] We concur in the hearing officer's reasoning. Moreover, the hearing officer found that Mr. Parker made "a claim for benefits" when he filed his Petition

for Restoration[1] on February 3, 2012. Implicit in this is a finding that Mr. Parker's filing of his Petition for Restoration three years after his benefits had been discontinued represented a new claim for benefits, rather than a continuation of his prior claim. He did not challenge the 21-day discontinuance under § 205(9)(C) by filing a petition for review; thus the dispute resolution process had not been triggered at that time. There was no ongoing litigation related to the 2006 date of injury when Mr. Parker made a claim for incapacity benefits on February 3, 2012.

[¶12] Me. W.C.B. 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." (Emphasis added). The hearing officer neither misconceived nor misapplied the law when interpreting the rule to require the filing of a NOC in this case.

The entry is:

The hearing officer's decision is affirmed.

[1] Frito-Lay suggests that Mr. Parker's Petition should have been styled as a petition for review under 39-A M.R.S.A. § 205(9)(C) (Supp. 2014). However, Mr. Parker had no reason to contest Frito-Lay's discontinuance at the time because he was already receiving total incapacity benefits due to his 2000 work injury. When Mr. Parker made a claim for benefits three years after they were discontinued, he was not receiving any benefits because the 2000 date of injury had been settled; therefore, there was no payment stream to "review." Instead, he properly sought restoration of benefits because he was seeking a new period of benefits.

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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