

ESTATE OF JAMES COLE
(Appellee)

v.

GIRL SCOUTS OF MAINE
(Appellant)

and

MEMIC
(Insurer)

Argued: September 24, 2015
Decided: November 2, 2015

PANEL MEMBERS: Administrative Law Judges¹ Pelletier, Hirtle, and Jerome
BY: Administrative Law Judge Pelletier

[¶1] James Cole and his surviving spouse, Carol P. Cole,² filed Petitions (1) for Award; (2) for Award-Fatal; and (3) for Payment of Medical and Related Services, pertaining to a head injury that Mr. Cole suffered while performing work for the Girl Scouts of Maine. The case was bifurcated to initially decide the issue whether Mr. Cole was an employee of the Girl Scouts under the Workers' Compensation Act. The administrative law judge (*Stovall, ALJ*) issued a decree determining that Mr. Cole was an employee at the relevant time. The Girl Scouts

¹ Pursuant to P.L. 2015, ch. 297 (effective October 15, 2015) Workers' Compensation Board hearing officers are now designated administrative law judges.

² Mr. Cole initially filed Petitions for Award and for Payment of Medical and Related Services, but passed away during the pendency of this litigation. His surviving spouse, Carol P. Cole, thereafter filed a Petition for Award-Fatal.

appealed that ruling, but the appeal was filed before a final decree in the matter had been entered. An appellate division panel dismissed the appeal because a final judgment adjudicating the merits of the claim had not been entered. The case was remanded for a final decision. *Estate of James Cole v. The Girl Scouts of Maine*, Me. W.C.B. No. 14-27 (App. Div. 2014).

[¶2] After the remand order, the parties agreed to dismiss without prejudice the Petition for Award-Fatal and the Petition for Payment of Medical and Related Services. The ALJ then entered a final decree granting the Petition for Award, and awarded total incapacity benefits from October 23, 2010, through November 6, 2012. The Girl Scouts filed a Motion for Additional Findings of Fact and Conclusions of Law, which the ALJ denied. The Girl Scouts have now filed a second appeal, contending that the factual findings underpinning the ALJ’s conclusion that Mr. Cole was an employee of the Girl Scouts, as opposed to a volunteer, were not supported by competent evidence. We disagree.

A. Standard of Review

[¶3] The appellate division’s role on appeal is “limited to assuring that the [ALJ’s] factual 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.” *Pomerleau v. United Parcel Serv.*, 464 A.2d 206, 209 (Me. 1983) (quotation marks omitted).

The ALJ's factual findings are not subject to review if supported by competent evidence. *Id.*; 39-A M.R.S. § 321-B(2) (Supp. 2014).

B. Discussion

[¶4] “Employee” is defined in the Workers’ Compensation Act in part as “every person in the service of another under any contract of hire, express or implied, oral or written.” 39-A M.R.S.A. § 102(11) (Supp. 2014). The ALJ found as fact that Mr. Cole was offered employment by the Girl Scouts, that he performed services for the Girl Scouts, and that he received payment for those services.

[¶5] These findings are supported by competent evidence in the record. Mr. Cole testified that the Girl Scouts of Maine’s Director of Property and Risk Management, Toni Carros, offered Mr. Cole a part-time job at a summer camp operated by the Girl Scouts. Mrs. Cole testified that she overheard the conversation in which Ms. Carros offered the employment. The ALJ expressly found this testimony to be credible. Further, Ms. Carros characterized the yearly payments the Girl Scouts made to Mr. Cole, over and above his out-of-pocket expenses, as an honorarium paid gratuitously in recognition of his services as a volunteer. However, Ms. Carros acknowledged the honorarium was based in part on the amount of work performed, and the ALJ found that “the honorarium Mr. Cole received was payment for work by another name.” And, although Mr. Cole

performed his duties with a degree of independence, the ALJ found that this did not negate the employee-employer relationship because he had performed the same types of duties for years and there was no need for close supervision of his work. These findings provide adequate support for the ALJ's conclusion that Mr. Cole was an employee, and not a volunteer.

[¶6] The ALJ neither misconceived nor misapplied the law, and the factual findings are supported by competent evidence in the record. Accordingly, the ALJ's decision is affirmed. *See Pomerleau*, 464 A.2d at 209.

The entry is:

The ALJ'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 (Supp. 2014).

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