JOAN G. DUBE
(Appellee)

v.

TWIN RIVERS PAPER COMPANY, LLC
(Appellant)

and

SEDGWICK CLAIMS MANAGEMENT SERVICES, INC.
(Insurer)

Argued: September 20, 2017
Decided: April 25, 2019

PANEL MEMBERS: Administrative Law Judges Jerome, Elwin, and Knopf
BY: Administrative Law Judge Jerome

[¶1] Twin Rivers appeals from a decision of a Workers' Compensation Board Administrative Law Judge (*Pelletier, ALJ*) denying its Petition for Review seeking to terminate partial incapacity benefits due to the expiration of the relevant durational limit, despite noncompliance with an order to reinstate appellee Joan Dube. *See* 39-A M.R.S.A. § 218 (Supp. 2018). The ALJ determined that Twin Rivers' petition is barred by the res judicata effect of an earlier decree deciding the same issue. We agree with the ALJ's legal conclusion, and affirm the decision.

I. BACKGROUND

[¶2] Joan Dube began working at Twin Rivers' mill in 1989. She suffered a work-related back injury on October 23, 1998, and Twin Rivers thereafter paid her partial incapacity benefits reflecting a 65% earning incapacity between the time

of the first decree in this matter—issued in December of 2000—and a second decree in August of 2001. In the 2001 decree, the hearing officer[1] (*Sprague, HO*) granted Ms. Dube's Petition for Reinstatement, and ordered Twin Rivers to return her to her prior position with light duty work as it became available. Ms. Dube returned to work for approximately two years, but later left due to a separate, nonwork-related injury. While she was out of work, Twin Rivers terminated her employment, claiming an inability to accommodate her restrictions.

[¶3] Ms. Dube subsequently filed a Petition for Restoration, which the board (*Pelletier, HO*) granted in 2006, determining that Twin Rivers had failed to carry its burden to prove that they were unable to offer work that accommodated her restrictions. The board concluded that Twin Rivers' failure to comply with the 2001 reinstatement order disqualified it from reducing or terminating benefits, pursuant to 39-A M.R.S.A. § 218(5) and (6).[2] The hearing officer therefore ordered payment of ongoing 100% partial incapacity benefits.

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[1] Prior to the enactment of P.L. 2015, ch. 297 (effective October 15, 2015), administrative law judges were designated as hearing officers.

[2] Section 218(5) and (6) provides:

> **5. Failure to comply.** The employer's failure to comply with the obligations under this section disqualifies the employer or insurance carrier from exercising any right it may otherwise have to reduce or terminate the employee's benefits under this Act. The disqualification continues as long as the employer fails to offer reinstatement or until the employee accepts other employment.
>
> If any injured employee refuses to accept an offer of reinstatement for a position suitable to the employee's physical condition, the employee is considered to have

[¶4] In 2013, Twin Rivers filed its Durational Limits Petition for Review of Incapacity, seeking to discontinue benefit payments pursuant to 39-A M.R.S.A. § 213 (Supp. 2018) and Me. W.C.B. Rule, ch. 2, §§ 1, 2, which capped the payment of partial incapacity benefits at 520 weeks for injuries assigned a percentage of whole body permanent impairment below a designated percentage.[3] There was no dispute that Ms. Dube had received more than 520 weeks of benefits, and there was no contention that her permanent impairment exceeded the relevant threshold. The hearing officer (*Pelletier, HO*) denied the request to terminate benefits on the basis that the 2006 decision was entitled to res judicata effect. He wrote in the 2013 decree:

> The decisive legal conclusion made by me in the 2006 decree was that because [Twin Rivers] failed to prove it could no longer reasonably accommodate [Ms. Dube's] limitations and restrictions, it remained subject to the 2001 reinstatement order. Absent such evidence, which has yet to be presented to this Board, the language of Section 218(5) still controls: [Twin Rivers] may not utilize **any right it may otherwise have** to reduce or terminate [Ms. Dube's] benefits under the Act. Any other right to reduce or terminate obviously includes the durational limits provision 213.

> voluntarily withdrawn from the work force and is no longer entitled to any wage loss benefits under this Act during the period of refusal.
>
> **6. Burden of Proof.** The petitioning party has the burden of proof on all issues regarding claims under this section except that the employer always retains the burden of proof regarding the availability or nonavailability of work.

[3] For Ms. Dube's 2002 date of injury, the designated percentage is 13.2% Me. W.C.B. Rule, ch. 2, § 1(2).

Furthermore, the hearing officer expressly rejected Twin Rivers' argument that the durational limit set forth in section 213 superseded the penalty imposed by section 218(5). The hearing officer stated instead that section 218 "provides a clear road map for the employer to attempt to get relief from the reinstatement order by showing that suitable work is no longer available within the employee's restrictions for valid reasons relating to the operation of its business." Instead of pursuing this avenue, Twin Rivers filed another Petition for Review seeking to terminate benefits due to the expiration of durational limits.

[¶5] On October 17, 2016, the ALJ (*Pelletier, ALJ*) issued the decree currently under appeal. He determined that because Twin Rivers raised the same issues and arguments as it had in the previous litigation, its petition was barred by the doctrine of res judicata. Twin Rivers filed a motion for additional findings of fact and conclusions of law pursuant to 39-A M.R.S.A. § 318 (Supp. 2018), which the ALJ denied. Twin Rivers appeals, arguing that the ALJ erred in applying principles of res judicata.

II. DISCUSSION

[¶6] "A finding of fact by an administrative law judge is not subject to appeal [before the Appellate Division]." 39-A M.R.S.A. § 321-B (Supp. 2018). Instead, appellate review is "limited to assuring that [the ALJ's] factual findings are supported by competent evidence." *Hall v. State*, 441 A.2d 1019, 1021 (Me.

1982). On issues of law, we assure "that [the ALJ's] decision involves no misconception of applicable law and that the application of the law to the facts was neither arbitrary nor without rational foundation." *Id.*

[¶7] Twin Rivers contends that the ALJ erred by deciding this case on res judicata grounds. It argues that the cap on entitlement to benefits imposed by section 213 is not superseded by reinstatement rights under section 218. Twin Rivers further asserts that res judicata does not bar its claim because, in its view, res judicata never precludes a petition for review based on durational limits. We reject this argument. The issue in this case is not whether the durational limits can be enforced. Rather, the question is whether Twin Rivers is entitled to relief pursuant to the durational limits of section 213 when a prior decree has validly concluded that it must first prove compliance with the reinstatement provisions of section 218.

[¶8] "It is well established that a valid judgment entered by a court, if not appealed from, generally becomes res judicata and is not subject to later collateral attack." *Ervey v. Ne. Log Homes*, 638 A.2d 709, 710 (1994) (quoting *Standish Tel. Co. v. Saco River Tel. & Tel. Co.*, 555 A.2d 478, 481 (Me. 1989)). The doctrine of res judicata embodies "a strong policy in favor of ending litigation and giving finality to court judgments." *Id*. "Balanced against a policy favoring finality, however, is a requirement that to become final, a judgment must be valid." *Id*.

"The 'validity' of a judgment depends upon whether a tribunal has subject matter jurisdiction and territorial jurisdiction and whether adequate notice has been afforded to a party." *Ervey*, 638 A.2d at 711. A judgment may be final and valid regardless of whether it is based upon legal error. *See, e.g.*, *id.* at 710-12 (deeming a board decision final and valid despite an apparent legal error).

[¶9] There is no contention that the previous board decisions in this case are invalid. Twin Rivers was not prevented from appealing the 2013 decree, or from filing a petition seeking to demonstrate compliance with that decree. Because it did not do so, the ALJ's conclusion regarding the continuing effect of section 218(5) remained binding on the parties. The ALJ did not err in concluding that res judicata precluded granting Twin Rivers' petition.[4]

[¶10] Twin Rivers also contends that section 218 contains its own internal time limitations that have been exceeded in this case. Subsection 218(3) provides: "The employer's obligation to reinstate the employee continues until 2 years, or 3 years if the employer has over 200 employees, after the date of the injury." Twin Rivers argues that this provision should be interpreted to limit the period in which an employer is obligated to reinstate, and not only the period in which an employee may bring the petition, as the Law Court has previously interpreted. *See Morgan-Leland v. University of Me.*, 632 A.2d 748, 748 (Me. 1993). However, as with the

[4] Because we affirm the ALJ on these grounds, we do not decide whether the provisions of section 218(5) do or do not take priority over the durational limits of section 213.

previous argument, we reject this contention as barred by res judicata. This legal question was as available for argument to Twin Rivers in 2013 as it is now. Because Twin Rivers failed to raise it then, in the interest of finality, the 2013 decree precludes it from being pursued now. *See Johnson v. Shaw's Distrib. Ctr.*, 2000 ME 191, ¶ 6, 760 A.2d 1057 (holding that an entire cause of action may be barred where the matters presented might have been litigated in the first action, the first action came to final, valid judgment, and the cause of action and parties are the same).

III. CONCLUSION

[¶11] The ALJ did not err in concluding that the board's previous decrees, which raised identical factual and legal issues, were entitled to res judicata effect. Those decrees are valid and continue to bar Twin Rivers from reducing or terminating benefits.

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 (Supp. 2018).

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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