HUGH BUTLER
(Appellant)

v.

CITY OF PORTLAND
(Appellee)

and

MAINE MUNICIPAL ASSOCIATION
(Insurer)

Argued: December 7, 2017
Decided: May 14, 2019

PANEL MEMBERS: Administrative Law Judges Goodnough, Jerome, and Stovall
BY: Administrative Law Judge Jerome

[¶1] Hugh Butler appeals from a decision of a Workers' Compensation Board Administrative Law Judge (*Collier, ALJ*) granting in part his Petitions for Review and To Determine Extent of Permanent Impairment, and granting the City of Portland's Petition to Terminate Benefits. Mr. Butler contends that the ALJ erred when determining that (1) the City of Portland was entitled to coordinate his partial incapacity benefit with social security benefits he received even though the City had not paid into the social security system on his behalf, and (2) the City did not violate Me. W.C.B. Rule, ch. 1, § 1, (the "fourteen-day rule") by failing to pay or controvert a claim when he left employment with the City. Finding no error, we affirm the decision.

I. BACKGROUND

[¶2] Hugh Butler worked as a custodian at Portland High School from 1971 to 2003. He suffered a work-related injury to his low back on December 21, 1989, and underwent surgery in 1990. The board approved a Permanent Impairment Agreement in May of 1994, finding that maximum medical improvement had been reached and awarding benefits based on 15% whole person permanent impairment. *See* 39 M.R.S.A. § 56-B (1989), repealed by P.L. 1991, ch. 885, § A-7.

[¶3] After the original injury, Mr. Butler eventually returned to work on a full-duty basis restricted only from excessive bending or lifting more than 50 pounds. He continued to suffer the effects of the injury, limping and taking an occasional day off because of his intermittent low back and left leg pain.

[¶4] Mr. Butler's work-related low back condition worsened in 2001 and his work capacity was reduced to sedentary light duty. He returned to work for a period of time in an accommodated clerical position on a part-time basis, while the City paid him partial incapacity benefits representing the difference between his injured and uninjured earning capacity. Mr. Butler left work in April of 2003 when the City told him that it was no longer able to accommodate his restrictions. The ALJ found that Mr. Butler did not want to retire at that time, but he nonetheless took a disability retirement from the City. He continued to receive workers' compensation benefits

reflecting a part-time work capacity but found it difficult to meet his financial obligations.

[¶5] Mr. Butler was not then eligible for social security retirement benefits because he had not worked for the requisite number of quarters outside the State retirement system. Mr. Butler found part-time work as a delivery driver for an auto parts business in October of 2006, and continued working at that job until he resigned in October of 2011. At that time, he began receiving social security retirement benefits. The City, which had not contributed to the social security system on Mr. Butler's behalf, began coordinating his social security and workers' compensation benefits.

[¶6] Mr. Butler subsequently filed his Petitions for Review and to Determine Extent of Permanent Impairment. The City filed its Petition to Terminate Benefits. The ALJ granted Mr. Butler's Petition for Review in part, finding that he was owed increased partial incapacity benefits based upon the cessation of his fringe benefits from the City until the expiration of the 400-week durational limit. *See* 39 M.R.S.A. §55-B (1989), repealed and replaced by P.L. 1991, ch. 885, §§ A-7, A-8 (codified at 39-A M.R.S.A. § 213). The ALJ also found that the City's offset of social security benefits was consistent with the applicable coordination of benefits provision, 39 M.R.S.A. § 62-B (1989), repealed and replaced by P.L. 1991, ch. 885, §§ A-7, A-8 (codified at 39-A M.R.S.A. § 221), and rejected Mr. Butler's claim that the City had

violated the fourteen-day rule when it failed to increase his benefits to total or to file a Notice of Controversy upon his retirement. Mr. Butler filed a Motion for Additional Findings of Fact and Conclusions of Law pursuant to 39-A M.R.S.A. § 318 (2018), which the ALJ granted, issuing an amended decision but not altering the outcome. On appeal, Mr. Butler disputes the ALJ's conclusions regarding the social security offset and the fourteen-day rule violation.[1]

II. DISCUSSION

[¶7] "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 of factual findings 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.*

A. Fourteen-Day Rule Claim

[¶8] Me. W.C.B. Rule, ch. 1, § 1(1)[2] provides that within fourteen days of "notice or knowledge" of an employee's claim for benefits, an employer must either

[1] The ALJ also found that Mr. Butler is entitled to additional permanent impairment benefits because of an increase in permanent impairment rating. The City has not appealed that finding, or the conclusion relating to his fringe benefits.

[2] Me. W.C.B. Rule, ch. 1, § 1 provides:

accept the claim and pay, pay without prejudice, or file a notice of controversy disputing the claim. The ALJ found that Mr. Butler did not seek an increase in his incapacity benefits at the time his employment with the City ended, and that neither the City nor its insurer received such a request from Mr. Butler or from anyone else on his behalf. Mr. Butler does not dispute these factual findings on appeal; instead, he argues that the ALJ erred as a matter of law in refusing to find a fourteen-day violation because the City had actual knowledge that Mr. Butler was put out of work due to his work-related injury and was therefore entitled to benefits. We find no error.

[¶9] "[A]n employer's notice that an employee may have suffered an injury is not synonymous with an employer's notice of an employee's claim for incapacity

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Claims for Incapacity and Death Benefits

1. 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 without Prejudice"; or
   - C. Deny the claim and file a Notice of Controversy.
2. Notice of the claim must be provided consistent with 39-A M.R.S.A. § 301, or to the employer's insurance carrier at the address registered with the Bureau of Insurance.
3. If the employer fails to comply with subsection 1 of this section, the employee must be paid total benefits, with credit for earnings and other statutory offsets, from the date the claim is made in accordance with 39-A M.R.S.A. § 205(2) and in compliance with 39-A M.R.S.A. § 204. The employer may discontinue benefits under this subsection when both of the following requirements are met:
   - A. The employer files a Notice of Controversy; and
   - B. The employer pays benefits from the date the claim is made. If it is later determined that the average weekly wage/compensation rate used to compute the payment due was incorrect, and the amount paid was reasonable and based on the information gathered at the time, the violation of subsection 1 of this section is deemed to be cured.

benefits." *Pearson v. Freeport School Dep't,* 2006 ME 78, ¶ 17, 900 A.2d 728. In *Pearson,* the employee contended that the employer had knowledge of her claim sufficient to invoke the penalty provisions of the fourteen-day rule when she informed the employer that she had been hospitalized due to work-related stress, and requested an unpaid leave of absence. *Id.* ¶¶ 3, 16. Although the hearing officer concluded that, at that time, the employee had given timely notice of her claim pursuant to 39-A M.R.S.A. § 302 (Supp. 2018), *id.* ¶ 17, the hearing officer also concluded that she had not given notice of a claim for benefits under the fourteen-day rule until a later date, when she clearly expressed that she was asserting a claim for workers' compensation benefits, *id.* ¶ 18. The Court reasoned:

> In *Carroll v. Gates Formed Fibre Products*, 663 A.2d 23 (Me. 1995), we addressed whether an employee had given notice sufficient to trigger the employer's obligation to pay or controvert a claim pursuant to a former version of the Act. We stated that although the statute did not necessarily require the employee to file a formal claim, it nevertheless contemplated
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> > some sort of claim or request by an employee. It would be impossible for an employer to know how much to pay . . . without some indication of an employee's demand. And clearly there must be something to controvert before an employer can know what to file in its notice of controversy.

Id. ¶ 17 (footnotes omitted). Mr. Butler could have articulated a claim for benefits at the time of his termination but did not do so. Without such a claim for benefits, the City had no way to know how much to pay. *See id.* ¶ 18*; see also Carroll*, 663 A.2d

at 24-25 (determining it insufficient to put an employer on notice of a claim for incapacity benefits when the employee was injured on the first day of work, missed three days, then quit on the fifth day, telling the employer only that she got headaches from the noise).[3]

[¶10] Mr. Butler returned to work on a part-time basis for five years, demonstrating that he continued to have an earning capacity post termination. As a matter of law, he was not automatically entitled to benefits on account of the circumstances that ended his employment. To invoke the penalty provision in Me. W.C.B. Rule, ch. 1, § 1, he had to make an affirmative claim for benefits. We find no error in the ALJ's determination on this issue.

B. Social Security Offset

[¶11] The ALJ allowed the City of Portland to take an offset due to Mr. Butler's receipt of social security benefits even though the City never contributed to the social security system on his behalf. Mr. Butler contends this was error.

[¶12] For Mr. Butler's injury on December 21, 1989, the relevant statutory language is found in former section 62-B of Title 39:

> **3. Coordination of benefits.** Benefit payments subject to this section shall be reduced in accordance with the following provisions.
>
> **A.** The employer's obligation to pay weekly compensation under section 54-B or 55-B shall be reduced by:

[3] Mr. Butler relies on language from *Carroll* that implies that an employer may have knowledge "from the circumstances of the injury" that it is responsible to pay benefits. 663 A.2d at 25. This could occur when an ALJ finds as fact an actual loss of earning capacity implied by the circumstances of the injury. The Court in *Carroll* did not find such circumstances, *see id.* at 24, and they are not present here.

> **(1)** Fifty percent of the amount of old age insurance benefits received or being received under the United States Social Security Act;
> **(2)** The after tax amount of the payments received or being received under an employee benefit plan provided by the same employer by whom benefits under section 54-B or 55-B are payable if the employee did not contribute directly to the plan; and
> **(3)** The proportional amount, based upon the ratio of the employer's contributions to the total contributions, of the after tax amount of the payments received or being received by the employee under an employee benefit plan provided by the same employer by whom benefits under section 54-B or 55-B are payable if the employee did contribute directly to the plan.

39 M.R.S.A. § 62-B (1989).

[¶13] Mr. Butler maintains that the legislative history of section 62-B clarifies that the Legislature intended to limit the amount of the social security offset allowed in any given case to that specific employer's share of social security taxes paid. We disagree.

[¶14] As a matter of statutory interpretation, resort to legislative intent is only appropriate when the plain language of the statute is ambiguous. *Hanson v. S.D. Warren Co.*, 2010 ME 51, ¶ 12, 997 A.2d 730. The ALJ concluded that the statute is unambiguous, and therefore he did not examine the Legislature's intent with respect to the social security offset. We agree with this analysis. The plain language of section 62-B allows an employer to take a 50% offset of any social security benefit "received," regardless of whether the employer contributes. In contrast, the same section allows partial or complete offsets for other kinds of employee benefit plans,

but explicitly limits the allowance of those offsets to "the same employer by whom benefits . . . are payable." *See* 39 M.R.S.A. § 62-B(3)(A)(2), (3). Although the Legislature was free to implement a proportional social security offset provision that is limited to the contributing employer, the plain language of section 62-B rejects such an approach.

[¶15] Mr. Butler also argues that section 62 of the former Act prevents the City of Portland from taking any offset for social security benefits received. The language of that section provided as follows:

> No savings or insurance of the injured employee independent of this Act shall be taken into consideration in determining the compensation to be paid, nor shall benefits derived from any source other than the employer be considered in fixing the compensation due.

39 M.R.S.A. § 62 (1989), repealed by P.L. 1991, ch. 885, §§ A-7.

[¶16] The ALJ made no error in rejecting this argument. The plain language of section 62-B(3)(A)(1) compels a 50% offset of social security benefits received or being received by an employee. "Though we consider the language of a particular section of a statute in the context of the whole statutory scheme, we will not apply other sections to create doubt when the meaning of any phrase or section is clear standing alone." *Darling's v. Ford Motor Co.*, 2003 ME 21, ¶ 7, 825 A.2d 344 (citing *Ballard v. Edgar*, 268 A.2d 884, 887-88 (Me. 1970)). Thus, the ALJ did not err when construing section 62 to limit the social security offset to the 50% plainly designated by the Legislature.

III. CONCLUSION

[¶17] The ALJ did not err in concluding that the City did not violate the fourteen-day rule, and his conclusion that the Act allows the City to take an offset for Mr. Butler's social security benefits is not a misconception of the law.

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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