STATE OF MAINE
WORKERS' COMPENSATION BOARD

APPELLATE DIVISION
Case No. App. Div. 17-0027
Decision No. 19-28

JAMES J. OUELLETTE
(Appellant)

v.

OUELLETTE FUNERAL & MEMORIAL SERVICES, INC.
(Appellee)

and

MAINE EMPLOYERS' MUTUAL INSURANCE CO.
(Insurer)

Argued: February 8, 2018
Decided: August 14, 2019

PANEL MEMBERS: Administrative Law Judges Hirtle, Collier, and Goodnough
BY: Administrative Law Judge Goodnough

[¶1] James Ouellette appeals from a decision of a Workers' Compensation Board administrative law judge (*Pelletier, ALJ*) denying his Petitions for Award and for Payment of Medical and Related Services, based on his alleged failure to provide timely notice to MEMIC, the employer's insurance carrier, pursuant 39-A M.R.S.A. § 301 (Supp. 2018).[1] Mr. Ouellette contends that he was not required to provide notice to the insurance carrier under section 301 because he was not self-employed at the time of his injury but was an employee of a corporation. He also asserts that the corporate employer's knowledge of his work-related condition satisfied the

[1] Title 39-A M.R.S.A. § 301 has since been amended. P.L. 2019, ch. 344, § 13 (providing for a 60-day notice period for dates of injury on or after January 1, 2020).

notice requirement pursuant to 39-A M.R.S.A. § 302 (Supp. 2018). We agree with Mr. Ouellette's contentions. Accordingly, we vacate the ALJ's decision and remand for entry of an order granting Mr. Ouellette's petitions.

I. BACKGROUND

[¶2] Mr. Ouellette was the sole owner and an employee of Ouellette Funeral and Memorial Services, Inc. ("the Corporation"), which operated funeral homes in Van Buren and Ashland. Over the years he embalmed thousands of bodies with various chemicals, including formaldehyde. In 2011, he developed a severe skin disorder and was treated at both the emergency room and by a dermatologist. His doctors suspected that he had developed a sensitivity to formaldehyde and treated him with prednisone. He definitively learned from a doctor's note on February 6, 2012, that his skin condition was caused by a contact allergy to formaldehyde, and that he would no longer be able to perform his work duties. He notified MEMIC of the work-related condition on May 17, 2012, and subsequently filed his Petitions for Award and for Payment of Medical and Related Services.

[¶3] The ALJ denied the petitions on the basis that Mr. Ouellette had not provided timely notice to MEMIC, as the workers' compensation insurer, citing 39-A M.R.S.A. § 301. Section 301 required a self-employed, injured employee to provide notice of a work-related condition to its workers' compensation insurer within 90 days of the date of injury. However, it required an employee who works

for a corporation to provide the statutory notice "to any official of the corporation." It is undisputed that Mr. Ouellette did not provide notice to MEMIC until more than 90 days from when he became aware that his condition was work-related.

[¶4] The ALJ issued an amended decision in response to Mr. Ouellette's Motion for Findings of Fact and Conclusions of Law but did not alter the outcome. Mr. Ouellette appeals.

II. DISCUSSION

[¶5] At issue is whether 39-A M.R.S.A. § 301 can be construed to require the sole owner of a closely-held corporation who is also an employee of the corporation to comply with the notice requirements applicable to self-employed individuals.

A. Statutory Construction

[¶6] When called on to construe "provisions of the Workers' Compensation Act, our purpose is to give effect to the Legislature's intent." *Hanson v. S.D. Warren Co.*, 2010 ME 51, ¶ 12, 997 A.2d 730. "In so doing, we first look to the plain meaning of the statutory language, and construe that language to avoid absurd, illogical, or inconsistent results." *Id.* We also consider "the whole statutory scheme of which the section at issue forms a part so that a harmonious result, presumably the intent of the Legislature, may be achieved." *Davis v. Scott Paper Co.*, 507 A.2d 581, 583 (Me. 1986).

[¶7] In addition, "[a]ll words in a statute are to be given meaning, and no words are to be treated as surplusage if they can be reasonably construed." *Central Me. Power Co. v. Devereux Marine, Inc.*, 2013 ME 37, ¶ 8, 68 A.3d 1262 (quotation marks omitted). We look beyond the plain meaning and consider other indicia of legislative intent, including legislative history, only when the statute is ambiguous. *Damon v. S.D. Warren Co.*, 2010 ME 24, ¶ 10, 990 A.2d 1028. "Statutory language is ambiguous if it is reasonably susceptible of different interpretations." *Id.*

B. Title 39-A M.R.S.A. § 301

[¶8] Title 39-A M.R.S.A. § 301 provides, in relevant part:

> For claims for which the date of injury is prior to January 1, 2013, proceedings for compensation under this Act, except as provided, may not be maintained unless a notice of the injury is given within 90 days after the date of injury. . . .
>
> The notice must be given to the employer, or to one employer if there are more employers than one; or, *if the employer is a corporation, to any official of the corporation*; or to any employee designated by the employer as one to whom reports of accidents to employees should be made. . . . *If the employee is self-employed, notice must be given to the insurance carrier or to the insurance carrier's agent or agency with which the employer normally does business.*

(Emphasis added).

[¶9] The ALJ determined that because Mr. Ouellette was the sole owner and employee of a closely-held business, Mr. Ouellette was essentially self-employed, and was required to provide notice to MEMIC within 90 days. Because he failed to do so, the ALJ determined that the claim was barred due to untimely notice. The

ALJ reasoned that construing the term "self-employed" to exclude a corporation with one owner-employee would lead to an absurd result: the employee's own knowledge of his injury would satisfy the notice requirement, and he would be entitled to coverage for his claim regardless of when he notified the insurer.[2]

[¶10] Mr. Ouellette argues that the term "corporation" in section 301 has a plain meaning separate from self-employment and that it was error to construe the term self-employed to include even a closely-held corporation. Further, as a corporation, he was under no statutory duty to provide notice to his workers' compensation insurer within 90 days. We agree with Mr. Ouellette.

[¶11] The term "self-employed" is not defined in section 301 or elsewhere in the Act. Title 39-A M.R.S.A. § 102(17) (Supp. 2018) defines "private employer" to include "corporations, including professional corporations, partnerships and natural persons." There is no dispute Ouellette Funeral and Memorial Services was incorporated, and that Mr. Ouellette, as the sole owner of the corporation he established, was the employer. Further, the Act defines an employee to include

[2] The ALJ in further findings notes the importance of attempting to ascertain the Legislature's intent by examining the whole statutory scheme. Rather than initially examining the language of section 301, however, he discusses why, as a policy matter, it would be undesirable for self-employed individuals who incorporate to satisfy the notice requirement by providing notice to him or herself: "Unlike a self-employed claimant who does business as an unincorporated sole proprietorship or partnership, a self-employed claimant doing business in corporate form could legally wait for as long a period of time as he or she chooses before giving notice of the injury to the entity on the risk for benefits under the Act. I decline to give the notice provisions of the Act such an absurd construction."

"every duly elected or appointed executive officer of a private corporation." 39-A M.R.S.A. § 102(11)(A) (Supp. 2018).

[¶12] The ALJ did not make findings regarding the exact nature of the corporation, beyond that it was solely-owned and operated by Mr. Ouellette and was "closely-held." Section 301 makes no distinction between closely-held and other corporations, and no provision in the Act equates self-employment with the corporate form. In section 301, the meaning of self-employment plainly does not include a corporation, whether "closely-held" or not, because the notice requirements in the statute pertaining to corporations are separate and distinct from the notice requirements pertaining to self-employed individuals. If the Legislature intended to require employees of closely-held corporations to provide notice to the insurance carrier it could have done so. Pursuant to the plain language of the statute, employees of a corporation are not considered self-employed.

[¶13] Moreover, construing the language regarding notice to the corporate employer to include a closely-held corporation does not produce an illogical or absurd result. Closely-held corporations may resemble self-employed individuals, but they nevertheless carry the imprimatur, both in fact and in law, of the corporate form.

[¶14] As noted above, all words in a statute must be given meaning, and no words are to be treated as surplusage if a reasonable construction can be achieved.

The interpretation advocated by MEMIC and adopted by the ALJ would effectively treat the phrase in section 301 "to any official of the corporation" as surplusage,[3] thereby frustrating the legislative direction that provides for a particular means of communicating notice to an employer when that employer is a corporation.

[¶15] Although we base our decision on the plain meaning of the statute, the legislative history of section 301 reinforces our decision. The Legislature amended the Act's notice provision in 1987 to add the self-employment reporting clause, P.L. 1987, ch. 103, § 1, in response to the Law Court's decision in *Daigle v. Daigle*, 505 A.2d 778 (Me. 1986). In that case, the Court considered whether a self-employed individual was required to provide notice to the insurance carrier pursuant to the predecessor to section 301, 39 M.R.S.A. § 63.[4] *Daigle*, 505 A.2d at 778. There is no indication that the employee in *Daigle* had formed a corporation, and the applicable version of the statute did not contain the self-employment reporting clause.

[¶16] The insurance carrier argued that the Court should read such a clause into the statute. *Id.* at 778. The Court, reviewing the competing interests and policy concerns, affirmed the Commission's decision that in the absence of a specific

[3] The ALJ did not address the sections of the statute that provide for notice to the corporation or to the corporate agent in either his original decree or in findings, focusing instead on the self-employment language in the last sentence of section 301.

[4] Before the 1987 amendment, 39 M.R.S.A. § 63 provided, in relevant part:

> Such notice shall be given to the employer, or to one employer if there are more employers than one; or, if the employer is a corporation, to any official thereof; or to any employee designated by the employer as one to whom reports of accidents to employees should be made.

statutory provision requiring self-employed individuals to provide notice to their insurance carriers, such notice was not required to maintain the claim. *Id.* at 780. The Court reasoned:

> We have previously noted, in *Wentzell v. Timberlands, Inc*., 412 A.2d 1213, 1215 ([Me.] 1980), that unlike other fields "in which the law has generally developed through judicial decision, the law of workers' compensation is uniquely statutory." *See also American Mutual Insurance Companies v. Murray*, 420 A.2d 251, 252 (Me. 1980). When the legislative record is silent as to the legislature's intent in failing to harmonize the notice provision and the amended definition of employee, we decline to read an additional notice requirement into section 63. To engraft such a requirement upon the statutory scheme would be to establish policy in a legislatively created field of law, a function we refused to undertake in *American Mutual Insurance Companies v. Murray*, 420 A.2d at 252.

Id. The Court also reasoned that the purposes of the notice provision were fulfilled on the facts of the case because the parties had stipulated that the injury was work-related, the injured employee had received medical treatment, and there was no need for investigation into the circumstances of the injury for purposes of determining coverage under the Act. *Id.* at 779.

[¶17] Thus, the Court left in place a scenario very much like the scenario now before us. In *Daigle*, due to the lack of a specific legislative directive, a self-employed individual's claim was not barred due to lack of timely notice to his insurance company. Here, due to a similar lack of a specific legislative directive, a corporate employee's claim is not barred for having failed to timely notify the

corporation's insurance company.[5] This construction, rather than creating an absurd result, merely reflects legislative policy choices regarding notice and corporate form. Further, as in *Daigle*, there was no evidence presented indicating that Mr. Ouellette was not able to obtain early and effective medical treatment for his injury, that there was any fraudulent conduct, or that there was any need for additional early investigation into the circumstances of the injury for purposes of determining coverage under the Act.

[¶18] The Statement of Fact accompanying the first draft of the 1987 amendment that added the self-employment reporting requirement stated:

> [T]he bill addresses the problem of notice in the case of self-employed persons. In *Daigle v. Daigle*, 505 A.2d 778 (Me. 1986) the Maine Supreme Judicial Court ruled in a 4 to 2 decision that the Workers' Compensation Act did not require employees who are self employed to give notice of an injury to the insurance carrier. In effect, they are only required to give notice to themselves as employers. This makes it impossible for the insurance carrier to do its job. This bill requires employees who are self [employed] to give notice of an injury directly to the insurance carrier.

L.D. 165, Statement of Fact (113th Legis. 1987).

[5] We acknowledge that the Court in *Daigle* based its reasoning in part on the repealed directive to construe the Act liberally found at 39 M.R.S.A. § 94-A(3), repealed and replaced by P.L. 1985, ch. 372, § A, 34 (effective June 30, 1985) (directing that the rule of liberal construction shall no longer apply). 505 A.2d at 779. We nevertheless are persuaded by the other factors considered by the Court, including, mainly, the Court's construction of the statute.

[¶19] Notably, neither the Court in *Daigle* nor the legislative response addressed or changed the language permitting notice to a corporate official when the employer is a closely-held corporation. Accordingly, we conclude that Mr. Ouellette was not under a statutory obligation to notify the insurer pursuant to section 301.

B. Title 39-A M.R.S.A. § 302

[¶20] Mr. Ouellette contends that even if his failure to provide notice to MEMIC barred his claim, he is in compliance with his statutory notice obligation by operation of 39-A M.R.S.A. § 302.[6] Section 302 provides in relevant part that "[w]ant of notice is not a bar to proceedings under this Act if it is shown that the employer or the employer's agent had knowledge of the injury."

[¶21] The Corporation, through its sole-owner, Mr. Ouellette, had knowledge of the injury upon Mr. Ouellette's receipt of the relevant medical note from his doctor. Because Mr. Ouellette was both an employee and the employer, his own knowledge of work-relatedness satisfied the notice requirement pursuant to section 302. Section 302 does not exclude from its purview employers who are also closely-held corporations. Thus, the alleged lack of adequate notice under section 301 would not bar him from proceeding with his claim.

[6] Although Mr. Ouellette raised the issue of the applicability of section 302 regarding employer knowledge, in his Motion for Findings, the ALJ addressed only a mistake of fact argument that has not been raised on appeal.

III. CONCLUSION

[¶22] Because the employer in this case was a corporation, Mr. Ouellette was not required to provide notice of his work-related allergy injury to employer's insurer within the statutory time frame. It was legal error to bar his claim for failure to notify MEMIC within 90 days under section 301, on the basis that he was essentially self-employed. Moreover, Mr. Ouellette was both an employee and the employer in this case. Thus, his receipt of the doctor's report establishing causation established the employer's actual knowledge of the work-related injury, satisfying the notice requirement under both sections 301 and 302.

The entry is:

> The administrative law judge's decision is vacated and the case remanded with instructions to enter an order granting Mr. Ouellette's petitions.

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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