STEPHEN WALLACE
(Appellee)

v.

COOKE AQUACULTURE USA, INC.
(Appellee)

and

GREAT FALLS INSURANCE CO.
(Appellant)

Argument held: April 11, 2018
Decided: October 2, 2019

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

[¶1] Great Falls Insurance Co. appeals a decision of a Workers' Compensation Board administrative law judge (*Pelletier, ALJ*) granting Stephen Wallace's Petition for Award of Compensation, and awarding total incapacity benefits. Greats Falls contends that Mr. Wallace's claim is covered exclusively by federal law, specifically the Jones Act, 46 U.S.C.S. § 30104, and that the board lacks subject matter jurisdiction in the case. The ALJ determined that Great Falls waived the Jones Act issue because it was neither timely raised nor adequately presented. We conclude that the issue involves the board's subject matter jurisdiction, and therefore was not waived. For this reason, we vacate the ALJ's decision and remand the case to address whether Mr. Wallace's claims are governed by the Jones Act.

I. BACKGROUND

[¶2] Stephen Wallace began working as a site manager for Cooke Aquaculture or its predecessor in 1991. On March 25, 2014, he slipped and fell while working on a barge that was part of Cooke Aquaculture's salmon farming operation, injuring his left knee and low back. Mr. Wallace continued working on a light duty basis until he had a total left knee replacement in December of 2014. Cooke Aquaculture commenced payment of total incapacity benefits on a voluntary basis at that time. Thereafter, Mr. Wallace continued to suffer from problems with his legs that prompted further diagnostic testing. It was determined that he suffered from disc problems in both his lumbar and thoracic spine that required two further surgeries in April and June of 2015. Mr. Wallace's problems persisted after these surgeries, resulting in partial paraplegia and chronic pain.

[¶3] Cooke Aquaculture disputed the causal relationship between Mr. Wallace's back problems and the March 25, 2014, slip and fall incident. A hearing was held on Mr. Wallace's Petition for Award on May 13, 2016. The ALJ held a conference of counsel on August 17, 2016, and set a September 23, 2016, due date for position papers.

[¶4] The case was ready for decision when Cooke Aquaculture requested a conference and moved to reopen the record, as counsel asserted, "for the limited purpose of getting testimony regarding whether or not this is a Jones Act case and

whether or not it needs to be filed in federal court as a Jones Act claim." The ALJ denied the motion on March 14, 2017, and issued a decision on the merits of Mr. Wallace's workers' compensation claim shortly thereafter. That decision awarded ongoing total incapacity benefits due to the injuries to both his knee and his spine resulting from the March 25, 2014, work injury.

[¶5] Cooke Aquaculture filed a motion for findings of fact and conclusions of law asking the ALJ to address the denial of the motion to reopen the evidence for want of jurisdiction. The ALJ granted the motion and issued an amended decree in which he further explained that Cooke Aquaculture had forfeited consideration of the issue because it failed to raise the issue in a timely manner and had addressed the issue only perfunctorily. Great Falls Insurance appeals.[1]

II. DISCUSSION

[¶6] The ALJ denied the request that the evidence be reopened for a determination of whether Mr. Wallace's claims fall under the Workers' Compensation Act or exclusively under the Jones Act because the request was made after the evidence had been closed and was not adequately supported, and therefore had been waived. Great Falls asserts that the ALJ erred because the issue involves the board's subject matter jurisdiction and cannot be waived. We agree.

[1] The employer and insurer obtained separate counsel after this appeal was filed. Great Falls states in its brief: "Subsequent to the administrative law judge's decision, it became apparent that a conflict had arisen between the interest of the Employer and their insurer, Great Falls Insurance Company. . . . Accordingly, the parties have obtained separate counsel for the purposes of this appeal."

[¶7] Subject matter jurisdiction refers to whether the judicial or administrative body has statutory or common law authority to adjudicate the matter. Donald G. Alexander, *Maine Appellate Practice* § 201 at 197 (4th ed. 2013); *see also Jensen v. Jensen*, 2015 ME 105, ¶ 11, 121 A.3d 809. It addresses the power and authority of the forum over the subject matter of the action. *Hawley v. Murphy*, 1999 ME 127, ¶ 8, 736 A.2d 268. "[A]n initial failure to challenge the subject matter jurisdiction of the court . . . does not preclude a party from raising the issue at a later time." *Id.* Subject matter jurisdiction "may be raised by a party, or by a court on its own initiative, at any stage in the litigation, even after trial and the entry of judgment." *Arbaugh v. Y & H Corp*., 546 U.S. 500, 506 (2006); *see also Jensen*, 2015 ME 105, ¶ 11; *Foley v. Ziegler*, 2005 ME 117, ¶ 8, 887 A.2d 36.

[¶8] The board's "normal subject matter jurisdiction" involves "adjudicat[ing] the respective rights and duties of employees, employers and insurance carriers inter se in the industrial accident compensation area, . . . in connection with its supervisory powers in enforcement of the Act." *Robbins v. Bates Fabrics, Inc.*, 412 A.2d 374, 378 (Me. 1980). That jurisdiction is strictly circumscribed by statute. "[T]he rights of a party under the Workers' Compensation Act are purely statutory," *Jordan v. Sears, Roebuck & Co*., 651 A.2d 358, 362 (Me. 1994) (quotation marks omitted), and the board "has only authority as is conferred upon it by express legislative grant or such as arises therefrom by implication as

incidental to full and complete exercise of the powers granted," *Hird v. Bath Iron Works*, 512 A.2d 1035, 1038 (Me. 1986).

[¶9] The Workers' Compensation Act gives the board the authority to adjudicate the rights of "an employee who . . . receives a personal injury arising out of and in the course of employment or is disabled by occupational disease" as against that employee's employer and workers' compensation insurer. 39-A M.R.S.A. § 201 (2001). The statutory definition of an "employee" expressly excludes "[p]ersons engaged in maritime employment . . . who are within the exclusive jurisdiction of admiralty law or the laws of the United States . . . ." 39-A M.R.S.A. §102(11)(A)(1) (Supp. 2018). Thus, the Act does not give the board the authority to decide cases involving persons within the exclusive jurisdiction of federal law. *See Cook v. Greyhound Bus Lines, Inc.*, 659 A.2d 287, 290 (Me. 1995) (affirming commission's dismissal of request for attorneys' fees for lack of subject matter jurisdiction; the fees were incurred while enforcing a workers' compensation award in bankruptcy court under federal law, not under the Workers' Compensation Act).

[¶10] The Jones Act, also known as the Merchant Marine Act, 46 U.S.C.S. § 30104, supersedes state law dealing with injuries suffered by "seaman" in the course of employment. *Lindgren v. United States*, 281 U.S. 38, 45 (1930); *Dorr v. Maine Mar. Acad.*, 670 A. 2d 930, 932 (Me. 1996). Pursuant to the Jones Act:

> A seaman injured in the course of employment or, if the seaman dies from the injury, the personal representative of the seaman may elect to bring a civil action at law, with the right of trial by jury, against the employer. Laws of the United States regulating recovery for personal injury to, or death of, a railway employee apply to an action under this section.

46 U.S.C.S. § 30104.

[¶11] The Supreme Court parsed the definition of "seaman" in *Chandris, Inc. v. Latsis*, 515 U.S. 347 (1995), reserving the Jones Act remedy to "sea-based maritime employees whose work regularly exposes them to the special hazards and disadvantages to which they who go down to sea in ships are subjected." *Id.* at 370 (quotation marks omitted). "A seaman must have a connection with a vessel in navigation that is substantial in both duration and nature." *Id.* The durational element requires a showing that the worker spends "about 30% of [their] time in the service of a vessel in navigation." *Id.* at 371.

[¶12] There is no dispute that the Jones Act issue was raised belatedly in this case and is subject to procedural forfeiture if it does not involve the board's subject matter jurisdiction. *See Severy v. S.D. Warren Co.*, 402 A.2d 53, 56 (Me. 1979). Mr. Wallace contends the issue is not related to subject matter jurisdiction, but merely involves whether an exclusion from the Workers' Compensation Act applies. Mr. Wallace further asserts that the issue of whether Mr. Wallace is an employee under the Act has been conceded by the employer who, during the litigation, did not dispute

that Mr. Wallace suffered a compensable injury under the Act, but merely contested the extent of that injury.

[¶13] In support of his contentions, Mr. Wallace cites *Holloway v. Pagan River Dockside Seafood*, 669 F.3d 448 (4th Cir. 2012). In that case, the District Court granted the alleged employer's motion to dismiss for lack of subject matter jurisdiction, concluding that the injured worker had not demonstrated that he was a Jones Act seaman or that his injury had occurred during his employment as a seaman. *Id.* at 450. The Fourth Circuit Court of Appeals reversed that decision, reasoning that subject matter jurisdiction involves whether a litigant has a right to be in the District Court at all and whether the court has the power to hear and dispose of a claim. *Id.* at 452. The Court concluded that the case did not involve the power of the court to hear the claim, but merely whether the claimant had established a fact necessary to state a cause of action under federal law. *Id.* at 453. Thus, in federal court, when alleging a Jones Act claim, establishing seaman status is an element of the cause of action, not a jurisdictional prerequisite. *Id.*

[¶14] The case before us is distinguishable. When an action is brought before the Maine Workers' Compensation Board, seaman status is not an element of a cause of action determined by application of the statute over which the Legislature has given the board jurisdiction. Instead, establishing such status involves whether

a litigant has a right to be before the board at all and whether the board has the power to hear and dispose of the claim.

[¶15] Mr. Wallace also cites *Kalesnick v. Seacoast Ocean Services,* 866 F. Supp. 36 (D. Me. 1994). In that case, Mr. Kalesnick suffered a work-related injury and was paid benefits under the Maine Workers' Compensation Act pursuant to a consent decree. *Id.* at 37. He then filed suit in federal court under the Jones Act for damages resulting from the same injury. *Id.* The employer filed a motion for summary judgment, contending that the Jones Act claim was barred by res judicata because Mr. Kalesnick had already been determined to be an employee under the Maine Act and therefore could not be a Jones Act seaman, even though the issue of Jones Act status had not been litigated before the Maine Workers' Compensation Board. *Id.* The District Court agreed, granting summary judgment and reasoning:

> Although the parties may never have discussed the details of Kalesnick's eligibility under the Maine Act, the conclusion is unavoidable that seeking Board approval was an assertion of eligibility. Maine Workers' Compensation benefits are available only to an "employee" as defined under the statute. The definition excludes "[p]ersons engaged in maritime employment or in interstate or foreign commerce who are within the exclusive jurisdiction of admiralty law or the laws of the United States." 39-A M.R.S.A. § 102(11)(A)(1) (mirroring the definition of exclusive federal jurisdiction in *Southern Pac. Co. v. Jensen*, 244 U.S. 205, 218 (1917)). Thus, the Board approval is implicitly a conclusive determination that Kalesnick is not within the exclusion. Kalesnick nowhere disputes that such a conclusion, if entitled to res judicata effect, would preclude this federal court action. Instead, his only argument on res judicata is that the issue was not litigated or that no final judgment on the merits was ever rendered, and thus that res judicata does not apply.

Id. at 38. The District Court thus determined that the employee's status as a nonmaritime employee "could have been litigated—indeed was implicit—in the earlier determination approving benefits under the Workers' Compensation Act." *Id.* *See also Polak v. Riverside Marine Constr., Inc.*, 22 F. Supp. 3d 109, 120 (D. Mass. 2014) (holding consent decree approved by Maine Workers' Compensation Board is res judicata on the issue of whether the injured worker is an employee covered by the Act and not excluded as a seaman, despite that the issue was not litigated).

[¶16] At the time the request to reopen the evidence was made in this case, however, no decision had issued. Therefore, there had been no determination, express or implicit, regarding Mr. Wallace's status as a seaman or employee. Voluntary payments under a state's workers' compensation laws are generally not treated as conclusive on the issue of seaman or employee status, therefore any concessions or voluntary payments made before a decision was entered would not determine the issue. *See Southwest Marine, Inc. v. Gizoni*, 502 U.S. 81, 91-92 (1991) ("[A]n employee who receives voluntary payments under the [Longshore and Harbor Workers' Compensation Act (LHWCA), 33 U.S.C.S. §§ 901-950,] without a formal award is not barred from subsequently seeking relief under the Jones Act . . . because the question of coverage has never been actually litigated.").

[¶17] The Maine Supreme Court addressed the Jones Act in *Dorr v. Maine Maritime Academy*, 670 A.2d 930. In that case, a workers' compensation

commissioner denied the employee's petition for review on the basis that the employee was a Jones Act seaman, subject to "the exclusive jurisdiction of admiralty law or the laws of the United States,"[2] and therefore he was not an employee under the Workers' Compensation Act. *Id.* at 931. The Court applied the *Chandris* criteria for establishing whether a worker is a Jones Act seaman, concluded that Mr. Dorr did not meet the criteria, and remanded the case for a determination of the issues pursuant to the Workers' Compensation Act. *Id.* at 933-34.

[¶18] It is apparent that the Court in *Dorr* viewed the issue as one of subject matter jurisdiction. The Court stated:

> It is generally understood that the Jones Act supersedes state workers' compensation laws applicable to seamen. As the United States Supreme Court stated in *Lindgren*, the Jones Act was "intended to bring about the uniformity in the exercise of admiralty jurisdiction required by the Constitution" and "as it covers the entire field of liability for injuries to seamen, it is paramount and supersedes the operation of all state statutes dealing with that subject. 281 U.S. at 44, 47.

670 A.2d at 932 (additional citations omitted). Moreover, while acknowledging that there are areas of concurrent jurisdiction between state workers' compensation laws and the LHWCA, the Court noted that the United States Supreme Court has never

[2] The commissioner applied the definition of employee in 39 M.R.S.A. § 2(5)(A)(1) (Supp. 1991), repealed and replaced by P.L. 1991, ch. 885, § A-7 (effective January 1, 1993), which contains identical language to the current definition.

expressly recognized concurrent jurisdiction between such state laws and the Jones Act. *Id.* at 932 n.2.[3]

[¶19] We conclude that the issue of an injured worker's status as an employee or Jones Act seaman is a threshold question that determines whether the board has statutory authority to adjudicate the claim. Thus, the issue goes to the board's subject matter jurisdiction, and cannot be waived.

[¶20] An ALJ's decision regarding reopening the evidence is reviewed for abuse of discretion. *Matthews v. Shaw's Supermarkets*, Me. W.C.B. 15-25, ¶ 20 (App. Div. 2015); *see also Kuvaja v. Bethel Sav. Bank*, 495 A.2d 804, 806 (Me. 1985). Because the ALJ determined that the employer had waived an issue that cannot be waived, we conclude that the determination was outside the bounds of his discretion.

The entry is:

> The administrative law judge's decision on the issue of waiver of the applicability of the Jones Act is vacated and the case is remanded for further proceedings concerning that issue.

[3] Mr. Dorr had argued on appeal that the commission had concurrent jurisdiction with the federal courts. Because the Court concluded that the employee was not a seaman in that case, it did not address the open question of concurrent jurisdiction. *Dorr*, 670 A.2d at 932 n.2. *See* 14 Lex K. Larson, *Larson's Workers' Compensation* § 146.05 (Matthew Bender, Rev. Ed. 2019).

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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