KENNETH LAWRENCE
(Appellee)

v.

JOHN LUCAS TREE EXPERTS, INC.
(Appellant)

and

CCMSI
(Insurer)

Conference held: April 11, 2019
Decided: July 15, 2021

PANEL MEMBERS: Administrative Law Judges Stovall, Hirtle, and Pelletier
BY: Administrative Law Judge Stovall

[¶1] John Lucas Tree Experts, Inc. (Lucas Tree), appeals from a decision of a Workers' Compensation Board administrative law judge (*Jerome, ALJ*) granting in part Kenneth Lawrence's Petition for Payment of Medical and Related Services regarding a March 8, 2005, date of injury. The ALJ determined that the limitations period was tolled during a payment "holiday" under 39-A M.R.S.A. § 107 (2001) because medical payments were made for the work injury and Lucas Tree had knowledge of those payments before the limitations period expired. Lucas Tree contends that the ALJ committed reversible error because the limitations period is tolled only by payments by an employer or insurer, not by credits toward a payment holiday. We disagree and affirm the decision.

I. BACKGROUND

[¶2] Kenneth Lawrence was injured at work on March 8, 2005. The circumstances of his injury gave rise to recovery from a third-party tort claim. Pursuant to 39-A M.R.S.A. § 107, Lucas Tree's obligation to pay incapacity and medical benefits was suspended during a payment "holiday"—a period consistent with the time it takes for the third-party settlement amount to be paid down for wage loss and work injury-related medical expenses. Before the payment holiday began, Lucas Tree made payments on Mr. Lawrence's workers' compensation claim, with the last payment being made on March 25, 2009. Without considering section 107, the statute of limitations would have expired on March 25, 2015. 39-A M.R.S.A. § 306 (Pamph. 2020) (setting the limitations period at six years from the most recent payment).

[¶3] Mr. Lawrence filed a petition for payment of medical and related services on February 6, 2015, alleging that he had incurred medical expenses related to his work injury; however, that petition was dismissed without prejudice. Mr. Lawrence later refiled his petition, and the parties agreed that the effective filing date was November 30, 2016.

[¶4] Relying on *McKeeman v. Cianbro*, 2002 ME 144, 804 A.2d 406, the ALJ determined that the statute of limitations was tolled during the payment holiday because the employer had notice that the treatment Mr. Lawrence received was due

to his work-related injury within the six-year period (based on the February 6, 2015, petition), and but for the payment holiday, Lucas Tree would have been required to pay for most of this this treatment.

[¶5] The ALJ also found that the payment holiday had been exhausted. Therefore, the ALJ ordered Lucas Tree to pay work injury-related medical expenses incurred thereafter. Lucas Tree filed a motion for further findings of fact and conclusions of law. The ALJ issued an amended decree but did alter the outcome. Lucas Tree appealed the amended decree.

II. DISCUSSION

[¶6] The role of the Appellate Division "is limited to assuring that the [ALJ's] 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." *Moore v. Pratt & Whitney Aircraft*, 669 A.2d 156, 158 (Me. 1995) (quotation marks omitted).

[¶7] When a party requests and proposes additional findings of fact and conclusions of law, as was done in this case, "we review only the factual findings actually made and the legal standards actually applied" by the ALJ. *Daley v. Spinnaker Indus.*, 2002 ME 134, ¶ 17, 803 A.2d 446 (quotation marks omitted). In addition, the Appellate Division will not disturb a factual finding made by the

ALJ absent a showing that it lacks competent evidence to support it. *Dunkin Donuts of Am., Inc. v. Watson*, 366 A.2d 1121, 1125 (Me. 1976).

[¶8] The employer relies on section 306 to assert that the statute of limitations has expired. That provision reads in relevant part:

> **Time for filing petitions**
>
> **1. Statute of limitations.** Except as provided in this section, a petition brought under this Act is barred unless filed within 2 years after the date of injury or the date the employee's employer files a required first report of injury if required in section 303, whichever is later.
>
> **2. Payment of benefits.** If an employer or insurer pays benefits under this Act, with or without prejudice, within the period provided in subsection 1, the period during which an employee or other interested party must file a petition is 6 years from the date of the most recent payment.

[¶9] Lucas Tree contends that under *Leighton v. S.D. Warren Co*., 2005 ME 111, 883 A.2d 906, *Klimas v. Great Northern Paper Co*., 582 A.2d 256 (Me. 1990) and the Appellate Division's decision in *Flanagan v. State of Maine*, Me. W.C.B. No. 14-22 (App. Div. 2014), more than notice of the work relatedness of prior treatment is necessary to extend the statute of limitations. The employer asserts that payment is required for the statute of limitations to extend and that the evidence establishes in this case that the employee went over six years without receiving any payment of workers' compensation benefits. Although the employer's argument and cited case law are accurate as they relate to section 306, none of the cases cited by the employer involve section 107 or the payment holiday.

> "When construing 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).

Graves v. Brockway Smith Co., 2012 ME 128, ¶ 9, 55 A.3d 456.

[¶10] In order to determine the impact of a payment holiday, we must first look to section 107. That provision reads in relevant part:

> **Liability of 3rd Persons; election of employee; subrogation**
>
> When an injury or death for which compensation or medical benefits are payable under this Act is sustained under circumstances creating in some person other than the employer a legal liability to pay damages, the injured employee may, at the employee's option, either claim the compensation and benefits or obtain damages from or proceed at law against that other person to recover damages.
>
> If the injured employee elects to claim compensation and benefits under this Act, any employer having paid the compensation or benefits or having become liable for compensation or benefits under any compensation payment scheme has a lien for the value of compensation paid on any damages subsequently recovered against the 3rd person liable for the injury. If the employee or the employee's beneficiary fails to pursue the remedy against the 3rd party within 30 days after written demand by the employer, the employer is subrogated to the rights of the injured employee and is entitled to enforce liability in its own name or in the name of the injured party, the accounting for the proceeds to be made on the basis provided.
>
> If the employee or the employee's beneficiary recovers damages from a 3rd person, the employee shall repay to the employer, out of the recovery against the 3rd person, the benefits paid by the employer under

> this Act, less the employer's proportionate share of cost of collection, including reasonable attorney's fees.
>
> If the employer recovers from a 3rd person damages in excess of the compensation and benefits paid or for which the employer has become liable, then any excess must be paid to the injured employee, less a proportionate share of the expenses and cost of actions or collection, including reasonable attorney's fees.

[¶11] Section 107 does not explicitly address the impact of a payment holiday, therefore we must look to case law for guidance. The Law Court has discussed the scope of that provision in several cases. *Liberty Mut. Ins. Co. v. Weeks*, explains the third-party liability provision's purpose:

> This purpose is fundamental to the entire scheme established by Section 68.[1] Whether the instrument be the lien, the subrogation action, or the requirement that the worker reimburse the carrier from the proceeds of his own action, *the ends to be furthered remain the same: the injured worker gains a greater recovery than he can from the compensation system*, the carrier is relieved of the compensation burden that another's fault has caused it to shoulder, and an objectionable immunity for the third person tortfeasor is prevented.

404 A.2d 1006, 1013 (Me. 1979) (emphasis added).

[¶12] *McKeeman v. Cianbro Corp.*, directly addresses section 107 and the effects of a payment holiday:

> [I]n *Overend we explicitly recognized the employer's continuing liability to the employee independently of settlement*….
>
> *The import of Weeks and Overend is this: the employer is liable for death or disability payments for the entire duration prescribed by statute—in this case 500 weeks—regardless of the existence or extent*

[1] Title 39 M.R.S.A. § 68 governed the liability of third persons under the prior Act. It has been replaced with section 107 in the current Act, but the language is equivalent.

> *of the employee's settlement with a third party*—subject to a set off commensurate with the settlement. *See* 39-A M.R.S.A. §§ 107, 215. Because the settlement signifies only the extent of the third party's liability, the employer's liability may extend well beyond that. If the amount of settlement obtained by the employee is greater than the present value of future payments the employer would have paid, the employer's payments are entirely suspended for the duration of the period of liability. *If, however, the amount of settlement obtained by the employee is not sufficient to cover the amount of future payments for which the employer would eventually become liable, then the employer's liability is suspended only to the extent of the settlement amount*. The employer again becomes liable for continuing payments once the amount of the settlement received by the employee is depleted based on the weekly amount the employer would have paid the employee but for the settlement.

2002 ME 14, ¶¶ 11, 12, 804 A.2d 406 (emphasis added).

[¶13] The employer's argument runs contrary to *Weeks*' holding. The flaw in the employer's argument is demonstrated in a death benefits case. Title 39-A M.R.S.A. § 215 (Pamph. 2020) provides that an employee's dependents are entitled to 500 weeks of lost wage benefits. Under the employer's argument, if an employee's dependents received a third-party settlement that equates to 312 weeks of lost wage benefits, which equals 6 years, the employee's dependents are no longer entitled to 500 weeks of benefits because the statute of limitations would have expired. This interpretation would result in the employee's dependents being deprived of the additional 188 weeks of death benefits to which they would otherwise be entitled.

[¶14] In the matter before us, if the statute were allowed to run while Lucas Tree took advantage of the payment holiday, Mr. Lawrence, having exhausted the third-party recovery, would receive a smaller total recovery than he would have from

the workers' compensation system alone, contrary to the intent of section 107 as articulated by the Law Court in *Weeks, Overend, and McKeeman*.

[¶15] The interpretation of the Act that the employer urges the board to adopt would also add a level of arbitrariness into a particular employee's recovery rights when the recovery is substantial from a third party.

> The commissioner's reading of the statute injects an element of arbitrariness into the recovery scheme. Had the employee obtained a workers' compensation award or agreement *before* settling with the third party, his total recovery would be the greater of the two sums. By settling with the tortfeasor first, the employee is limited to that recovery, even if the employer would be liable for a greater sum under the Act. The employee is thus penalized for achieving what the law ordinarily encourages, namely, expeditious settlement with the third party without resort to litigation.

Overend v. Elan I Corp., 441 A. 2d 311, 313-314 (1982).

[¶16] The employer's argument is at odds with precedent and is inconsistent with the policy expressed in case law and statute to ensure employees receive their full entitlement to workers' compensation benefits while providing the employer relief from payment reflective of a third party's liability.[2] The ALJ found the employer's knowledge during its holiday that the employee's medical treatment was

[2] At the time of the decision and the appeal, neither the ALJ nor the parties had the benefit of the Law Court's recent decision in *Charest v. Hydraulic Hose*, 2021 ME 17, 247 A.3d 709. That case also involved tolling the statute of limitations under section 306 during an offset, but an offset for Social Security old age benefits controlled by 39-A M.R.S.A. 221 (Pamph. 2020), rather than an offset for a third-party recovery under section 107. While the outcome in this case tracks the outcome in Charest, we do not rely on Charest for authority as the reasoning in that decision was rooted in the specific language of section 221.

due to his work-related injury relevant, finding, "no reason, consistent with the purposes of the Act, to extinguish liability after six years as long as the Employer has notice or knowledge that the employee has continued to receive work-related medical treatment during the six-year limitation period." In light of *Weeks*, *McKeeman*, and *Overend*, we find no basis to hold that such knowledge is a condition precedent for the tolling of the statute of limitations under section 107.

III. CONCLUSION

[¶17] Contrary to the employer's contentions, the ALJ did not err in concluding that the statute of limitations did not expire during the suspension of the employer's requirement to pay because of the payment holiday under section 107.

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 (Pamph. 2020).

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.

Attorney for Appellant:
James A. McCormack, Esq.
TAYLOR, McCORMACK & FRAME
30 Milk Street, 5th Floor
Portland, ME 04101

Attorneys for Appellee:
Michael J. Welch, Esq.
William C. Herbert, Esq.
HARDY, WOLF & DOWNING
P.O. Box 3065
186 Lisbon Street
Lewiston, ME 04243