ANITA FARRELL
(Appellant)

v.

MAINEGENERAL HEALTH
(Appellee)

and

MAINEGENERAL HEALTH ASSOC.
(Insurer)

Argument held: September 28, 2022
Decided: March 6, 2023

PANEL MEMBERS: Administrative Law Judges Elwin, Hirtle, and Rooks
BY: Administrative Law Judge Rooks

[¶1] Anita Farrell appeals from a decision of a Workers' Compensation Board administrative law judge (*Knopf, ALJ*) denying her Petition for Award regarding a 1997 work injury sustained while working for MaineGeneral. Ms. Farrell asserts: the ALJ erred when determining that the applicable statute of limitations barred her claim, *see* 39-A M.R.S.A. § 306(2); the decision is based on factual errors made in a prior decree; and the decision is fundamentally unfair. We affirm the decision.

I. BACKGROUND

[¶2] Ms. Farrell experienced a compensable work injury to her neck, low back, and right shoulder in 1997 while working for MaineGeneral. In a 2005 decree, amended with additional findings in 2006, she was awarded partial incapacity

benefits in the amount of $4.13 per week. This award was based on Ms. Farrell's average weekly wage at the time and an imputed, full-time earning capacity at minimum wage.

[¶3] Ms. Farrell continued to receive medical treatment for her injury. MaineGeneral filed a Notice of Controversy regarding that treatment. In turn, Ms. Farrell filed a Petition for Review seeking an increase in benefits. After a hearing, the board issued a decree in February 2008, ordering MaineGeneral to pay certain medical expenses and to increase Ms. Farrell's incapacity benefits to total for a closed-end period, then to 50% partial incapacity for an additional closed-end period, and ending when Ms. Farrell regained full-time work capacity, at which point there was no wage loss associated with the injury.

[¶4] In December 2008, MaineGeneral filed a Notice of Controversy, again disputing claimed medical expenses. The case was mediated but no agreement was reached. Ms. Farrell did not file a petition and MaineGeneral did not resume paying medical expenses. MaineGeneral filed another Notice of Controversy in November 2010, also contesting claimed medical payments. A board claims resolution specialist wrote to Ms. Farrell to confirm that she did not intend to seek payment of medical expenses at that time. The letter contained language informing Ms. Farrell that her claim was subject to a six-year statute of limitations that began to run as of the date of the last payment on her claim. Ms. Farrell did not pursue her claim.

[¶5] Ms. Farrell filed a Petition for Award in 2020, seeking payment of medical expenses and resumption of wage loss benefits. A hearing was held on July 1, 2021. MaineGeneral submitted an affidavit stating that it had not made a payment on Ms. Farrell's claim since 2009. Ms. Farrell testified that Medicare had been paying for her medical treatment since MaineGeneral ceased payments. Based on this evidence, the ALJ determined that the six-year statute of limitations in 39-A M.R.S.A § 306(2) barred the claim. Ms. Farrell filed a motion for further findings of fact and conclusions of law, after which the ALJ issued additional findings but did not alter the outcome of the original decree. This appeal followed.

II. DISCUSSION

A. Standard of Review

[¶6] The Appellate Division's role on appeal "is limited to assuring that the [ALJ's] factual 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." *Pomerleau v. United Parcel Serv.*, 464 A.2d 206, 209 (Me. 1983) (quotation marks omitted). 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., Inc.*, 2002 ME 134, ¶ 17, 803 A.2d 446 (quotation marks omitted).

B. Statute of Limitations

[¶7] Ms. Farrell asserts that the ALJ erred in determining that the statute of limitations barred her claim. Ms. Farrell's claim is governed by 39-A M.R.S.A. § 306(2). Section 306 bars any claim unless filed within two years after the date of injury, except—as in this case—when an employer pays benefits under the Act, the claim is barred unless the petition is filed within six years from the most recent payment. Section 306 further sets out the circumstances in which the statute of limitations is tolled or extended.[1]

[1] Title 39-A M.R.S.A. § 306 provides, in relevant part:

> **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 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.
>
> > **A.** The provision of medical care for an injury or illness by or under the supervision of a health care provider employed by, or under contract with, the employer is a payment of benefits with respect to that injury or illness if:
> >
> > > **(1)** Care was provided for that injury or illness on 6 or more occasions in the 12-month period after the initial treatment; and
> > >
> > > **(2)** The employer or the health care provider knew or should have known that the injury or illness was work-related.
> >
> > For the purposes of this paragraph, "health care provider" has the same meaning as provided in rules of the board.
>
> . . . .

[¶8] An employer bears the burden of establishing when the latest payment for the injury was made and that no additional payments extended the statute of limitations. *Leighton v. S.D. Warren Co.*, 2005 ME 111, ¶ 1, 883 A.2d 906. The ALJ found that MaineGeneral met its burden by producing an affidavit indicating that the last payments it made were in 2009. Further, Ms. Farrell testified that Medicare, not MaineGeneral, paid for medical expenses for several years. These findings are supported by competent evidence. Once MaineGeneral met its burden, the burden shifted to Ms. Farrell to prove that the limitations period was tolled or extended for an established reason. *Id.* ¶ 16.

[¶9] Ms. Farrell first contends that the Law Court's decision in *Charest v. Hydraulic Hose & Assemblies, LLC*, 2021 ME 17, 247 A.3d 709, applies to toll the statute of limitations because she was receiving social security disability benefits at the time she claims her benefits were due. We disagree.

[¶10] In *Charest*, the Law Court held that if an ongoing obligation to pay workers' compensation benefits is fully offset, pursuant to 39-A M.R.S.A § 221,[2]

> **4. Physical or mental incapacity.** If an employee is unable to file a petition because of physical or mental incapacity, the period of that incapacity is not included in the limitation period provided in subsection 1.

[2] The coordination of benefits provision, section 221, provides, in relevant part:

> **1. Application.** This section applies when either weekly or lump sum payments are made to an employee as a result of liability pursuant to section 212 or 213 [total or partial incapacity] with respect to the same time period for which the employee is also receiving or has received payments for:

because of contemporaneous receipt of old-age social security payments, the social security benefits are considered primary payments on the workers' compensation claim and the statute of limitations is tolled. 2021 ME 17, ¶ 26. The Court determined that in that circumstance, the statute of limitations would run from the date of the most recent offsetting old-age social security payment. *Id.*

[¶11] *Charest*, however, is distinguishable from this case. Here, MaineGeneral was under no obligation to pay workers' compensation benefits at the time Ms. Farrell received social security disability payments. Because no payments under the Act were owed or being paid, there was no offset to be taken, and *Charest* does not apply.[3] Moreover, the reasoning in *Charest* does not extend to the

> A. Old-age insurance benefit payments under the United States Social Security Act, 42 United States Code, Sections 301 to 1397f . . .
>
> . . . .
>
> **3. Coordination of benefits.** Benefit payments subject to this section must be reduced in accordance with the following provisions.
>
> A. The employer's obligation to pay or cause to be paid weekly benefits other than benefits under section 212, subsection 2 or 3 [for presumed total incapacity and specific losses] is reduced by the following amounts:
>
> (1) Fifty percent of the amount of the old-age insurance benefits received or being received under the United States Social Security Act. For injuries occurring on or after October 1, 1995, such a reduction may not be made if the old-age insurance benefits had started prior to the date of injury or if the benefits are spouse's benefits. ...

[3] Further, social security disability benefits do not offset an employer's obligation to pay incapacity benefits under the Maine Workers' Compensation Act. 39-A M.R.S.A. § 221(3)(E). Rather, the offset flows in the opposite direction: social security disability benefits are reduced by a claimant's receipt of state workers' compensation benefits. 42 U.S.C.A. § 424a.

proposition that Medicare payments are a substitute for medical payments by an employer or insurer that would extend the limitations period. Accordingly, the ALJ did not err in concluding that the statute of limitations was not tolled for the period during which Ms. Farrell received social security disability payments.[4]

C. Alleged Factual Error

[¶12] Ms. Farrell disputes certain factual findings in a prior decree of the board, specifically a finding regarding her percentage of permanent impairment. However, "[i]t 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 '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 even if it contains errors.

[4] Ms. Farrell also argued before the ALJ that the limitations period was extended because the medical care for her injury was provided by a health care provider employed by or under contract with MaineGeneral, and therefore constitutes a payment of benefits under section 306(2)(A). The ALJ found that Ms. Farrell submitted no evidence that her treating doctors were employed by or under contract with MaineGeneral and therefore section 306(2)(A) did not apply.

Ms. Farrell further argued that the statute of limitations was tolled pursuant to section 306(4) because she was unable to timely file a petition. The ALJ, however, found Ms. Farrell was able successfully to file for disability benefits during the same period, and that she declined to file a petition within the limitations period on advice of counsel, who told her there would be little to gain by doing so.

To the extent these arguments are raised again on appeal, they lack merit. After careful review of the record, we conclude that the ALJ's findings on these issues are supported by competent evidence, and the ALJ committed no legal error when determining that the statute of limitations had not been tolled on either of these bases.

See, Ervey 638 A.2d at 710-12 (deeming a board decision final and valid despite an apparent legal error).

[¶13] Ms. Farrell has not challenged the validity of the 2008 decree, therefore the factual findings in that decree stand. Moreover, the error asserted by Ms. Farrell pertains to percentage of permanent impairment, which would have no bearing on the application of the statute of limitations.

D. Fundamental Fairness

[¶14] Ms. Farrell argues that MaineGeneral has unfairly benefitted from its decision to cease paying her work-related medical expenses. She asserts that failing to make medical payments as of 2009 should not result in an advantage to MaineGeneral when the physical effects of her injury have not ended and she has not been able to return to work.

[¶15] Because we find no error in the ALJ's construction or application of the appropriate statutory provision, 39-A M.R.S.A. § 306(2), we cannot reverse the decision on this basis. The Workers' Compensation Act is uniquely statutory, and there are no powers of general equity available to the parties. *Grubb v. S.D. Warren Co.*, 2003 ME 139, ¶ 19, 837 A.2d 117.

[¶16] To the extent we construe Ms. Farrell's argument as asserting an alleged violation of due process, we will vacate the ALJ's decision only if, considering all

the circumstances, the proceedings were fundamentally unfair. *Kuvaja v. Bethel Savings Bank*, 495 A.2d 804, 806-07 (Me. 1985).

[¶17] As noted above, MaineGeneral contested Ms. Farrrell's medical expenses by filing a Notice of Controversy in late 2008, which triggered the mediation process. The case was mediated but no agreement was reached. MaineGeneral filed an additional Notice of Controversy in 2010. At that time, a board claims resolution specialist wrote to Ms. Farrell informing her of the six-year statute of limitations, from the date of last payment, that would apply in her case. Ms. Farrell did not pursue her claim with the board. The ALJ found that she decided not to go forward at that time because her attorney advised her that having started to receive social security disability and Medicare, there was little to be gained by pursuing workers' compensation.

[¶18] Based on the procedural history of this case and the facts as found by the ALJ, which are supported by competent evidence in the record, we conclude that Ms. Farrell had a full and fair opportunity to challenge MaineGeneral's decision to contest her medical expenses, and therefore, the proceedings were not fundamentally unfair.

III. CONCLUSION

[¶19] The ALJ's findings are supported by competent evidence, the decision involved no misconception of applicable law and the application of the law to the facts was neither arbitrary nor without rational foundation.

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.

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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