STATE OF MAINE
WORKERS' COMPENSATION BOARD

APPELLATE DIVISION
Case No. App. Div. 23-0006
Decision No. 24-06

KATHERINE STOVALL
(Appellant/Cross-Appellee)

v.

NEW ENGLAND TELEPHONE COMPANY
(Appellee/Cross-Appellant)

and

SEDGWICK CLAIMS MANAGEMENT SERVICES

Argument held: September 20, 2023
Decided: March 28, 2024
Corrected: April 2, 2024

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

[¶1] Katherine Stovall appeals and New England Telephone Company cross appeals from a decision of a contract administrative law judge (*D. Pelletier, ALJ*) denying Ms. Stovall's Petition for Restoration regarding an injury date of September 12, 1996. Ms. Stovall contends the contract ALJ erred in finding that the statute of limitations barred her claim. She further asserts that New England Telephone's obligation to pay remains open because it failed to comply with 39-A M.R.S.A. § 205(9)(B) when ceasing benefit payments. New England Telephone contends the contract ALJ erred in rejecting its defense of *res judicata*, asserting that Ms. Stovall's claim is barred because she could have raised it in an earlier round of litigation. We find no error in the application of *res judicata*. However, because we conclude that the contract ALJ erred when determining that Ms. Stovall's claim is

barred by the statute of limitations and that New England Telephone failed to comply with section 205(9)(B), we vacate the decision and enter judgment for Ms. Stovall.

I. BACKGROUND

[¶2] This is an appeal from a board decision after a remand from the Appellate Division. The case history was set forth in the prior Appellate Division decision, *Stovall v. New England Telephone Co.*, Me. W.C.B. No. 21-35 (App. Div. 2021) ("*Stovall I*"), and we restate it here.

[¶3] Ms. Stovall sustained injuries while working for New England Telephone on September 12, 1996, and June 29, 2001. In 2004, she filed two Petitions for Award regarding these injury dates. New England Telephone filed a memorandum of payment with the Workers' Compensation Board on May 17, 2005, accepting Ms. Stovall's 1996 injury and establishing a compensation scheme of total incapacity benefits at the rate of $491.35 per week. A hearing was held before the board (*Smith, contract hearing officer*)[1] on February 27, 2006, at which time, Ms. Stovall dismissed the petition regarding the 1996 injury. The dismissal was granted on the record without objection from counsel for New England Telephone. The hearing went forward on the 2001 injury, resulting in a board decision dated August 6, 2006.

[1] Pursuant to P.L. 2015, Ch. 297 (effective Oct. 15, 2015), Workers' Compensation Board hearing officers licensed to practice law are now designated as administrative law judges (ALJs). The decisions made by contract hearing officer Smith, however, were made before this change.

[¶4] The caption of the 2006 decision listed both dates of injury, but the decision recites the procedure by which the petition regarding the 1996 injury date was dismissed and reflects the dismissal. The board found that Ms. Stovall experienced a work-related injury on June 29, 2001, and required New England Telephone "to continue paying the employee total compensation benefits based on her $978.22 average weekly wage at the time of her June 29, 2001 injury with fringe benefits of $10,666.65 [sic] until the date of this decree." The decree further provided Ms. Stovall was "entitled to ongoing benefits at the rate of 40%." The decree did not further address the merits of the 1996 injury date.

[¶5] Up until the 2006 decree, New England Telephone had been paying total incapacity benefits on the 1996 injury pursuant to the 2005 memorandum of payment. After the decree, New England Telephone ceased paying total incapacity benefits recorded under the 1996 date of injury and began paying 40% partial incapacity benefits recorded under the 2001 date of injury. No payments were recorded under the 1996 injury after 2006.

[¶6] In 2010, New England Telephone filed a Petition for Review, asserting that it had paid all partial incapacity benefits to which Ms. Stovall was entitled for the 2001 work injury. *See* 39-A M.R.S.A. § 213. The 2010 Petition for Review referred only to the 2001 work injury. The contract hearing officer granted the petition by decree dated July 6, 2011, determining that Ms. Stovall's level of

permanent impairment did not exceed the threshold that would entitle her to partial incapacity benefits for the duration of her disability, and that she had received the maximum number of benefit payments to which she was entitled. The caption of the decision listed both of Ms. Stovall's injury dates, but the decision did not address the effects of or payments for the 1996 injury. Thereafter, New England Telephone ceased all incapacity benefit payments to Ms. Stovall.

[¶7] Shortly before six years from the date of the 2011 decision, Ms. Stovall filed a Petition for Restoration regarding her 1996 work injury, claiming that the 2005 memorandum of payment remained in effect because no interim petition and board decision had permitted New England Telephone to cease paying benefits on the 1996 date of injury, citing 39-A M.R.S.A. § 205(9)(B)(2). New England Telephone argued that the prior board decisions pertained to both the 1996 and 2001 work injuries and therefore, Ms. Stovall's claim was barred by the doctrine of *res judicata*. In the alternative, New England Telephone argued that Ms. Stovall's claim was barred by the six-year statute of repose as it had ceased making payments recorded under the 1996 injury following the board's decision in 2006.

[¶8] In a decision dated January 17, 2019, the board (*McElwee*, *contract ALJ*) found that the prior board decisions had adjudicated Ms. Stovall's right to benefits for her 1996 injury, and that New England Telephone had no outstanding payment obligation on her claims. Alternatively, the contract ALJ found that "absent any

evidence of a change of the employee's condition between the 7/6/11 decision and 6/28/17 petition, her claim is barred by the doctrine of laches."

[¶9] A panel of the board's Appellate Division vacated and remanded that decision finding that the contract ALJ had not addressed the issues of *res judicata* or the statute of limitations and had erred when applying the equitable doctrine of laches in a worker's compensation case. *Stovall I*, ¶¶ 14-16.

[¶10] On remand, a new contract ALJ (*D. Pelletier*) found that *res judicata* did not bar Ms. Stovall's claim because the parties had not previously litigated the claim presented for dispute in the current litigation. The ALJ also found that the statute of repose barred Ms. Stovall's claim because more than six years had passed between the filing of the claim and the last payment attributed by New England Telephone to the 1996 injury. Specifically, the ALJ found that Ms. Stovall had not met her burden of persuasion to demonstrate that New England Telephone made payments during the relevant time accompanied by contemporaneous notice that such payments were in part related to the 1996 injury. The contract ALJ found that without this notice, payments recorded under the 2001 injury were legally insufficient to extend the statute of repose for the 1996 injury.

[¶11] Both parties filed Motions for Additional Findings of Fact and Conclusions of Law. The contract ALJ issued additional findings but did not alter the outcome of the case. This appeal and cross-appeal followed.

II. DISCUSSION

A. Standard of Review

[¶12] In general, 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). Because the parties requested findings of fact and conclusions of law following the decision, the Appellate Division will "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.

B. *Res judicata*

[¶13] As the appellate panel noted in *Stovall I*, valid and final decisions of the Workers' Compensation Board are subject to the rules of *res judicata* and issue preclusion. *See Grubb v. S.D. Warren Co.*, 2003 ME 139, ¶ 9, 837 A.2d 117. The doctrine of *res judicata* generally bars "the relitigation of issues that were tried, or that may have been tried, between the same parties or their privies in an earlier suit on the same cause of action." *Blance v. Alley*, 1997 ME 125, ¶ 4, 697 A.2d 828 (quotation marks omitted). In workers' compensation proceedings, however, *res judicata* is read narrowly to preclude the relitigation of issues actually litigated. *See*

Spencer's Case, 123 Me. 46, 47, 121 A. 236 (1923) (holding that litigation resolving an injury to two fingers did not bar later litigation for an injury to the thumb arising from the same occurrence); *Wacome v. Paul Mushero Constr. Co*., 498 A.2d 593, 594 (Me. 1985) (holding that litigation establishing a foot injury did not preclude the employee from later claiming that he injured his back in the same incident). The contract ALJ relied upon the narrow interpretation of *res judicata* as set out in *Wacome* and *Spencer*, to conclude that Ms. Stovall's current claim could proceed because it was not actually litigated in the past.

[¶14] New England Telephone argues that applying the "actually litigated" standard in this case constituted an error of law, contending the Law Court has indicated that the "might have been litigated" standard should remain viable in the workers' compensation arena. In support, New England Telephone cites *Somers v. S.D. Warren Co.*, 2020 ME 137, ¶ 10, 242 A.3d 1091, and *Johnson v. Shaw's Distrib. Ctr.*, 2000 ME 191, ¶ 6, 760 A.2d 1057, in which the Law Court recited the *res judicata* standard that includes the "might have been litigated" prong in the workers' compensation context.

[¶15] Neither *Somers* nor *Johnson,* however, addresses the Court's past reliance on the "actually litigated" standard in the workers' compensation context,

and instead cite to civil cases for the broader legal standard.[2] In *Johnson* and *Somers,* the Law Court made no mention of *Spencer's Case* or *Wacome*, and neither case has been overruled. Further, the board's Appellate Division has relied extensively upon *Spencer's Case* and *Wacome* in resolving the issue of whether claims should be barred.[3] Accordingly, we conclude that the contract ALJ did not err in determining that the 1996 claim is not barred pursuant to the "actually litigated" standard.

C. Statute of Limitations: Contemporaneous Notice

[¶16] Title 39-A M.R.S.A. § 306 (2001)[4] establishes a two-year statute of limitations for filing a petition for workers' compensation benefits, and further provides:

> 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.

39-A M.R.S.A. § 306(2) (2001). However, in multiple injury cases, an employer's decision to record payments under one date of injury will also extend the six-year

[2] *Dep't of Human Serv. v. Comeau*, 663 A.2d 46, 48 (Me. 1995) and *Berry v. MaineStream Fin.*, 2019 ME 27, ¶ 8, 202 A.3d 1195 (respectively).

[3] *See e.g. Low v. Nestle Waters N. Am., Inc.*, Me. W.C.B. No. 24-01, ¶ 6 (App. Div. 2024); *Estate of Boyle v. Lappin Bros.*, Me. W.C.B. No. 23-18, ¶ 13 (App. Div. 2023); *Hebert v. Twin Rivers Paper Co., LLC*, Me. W.C.B. No. 22-24, ¶ 7 (App. Div. 2022); *Madore v. Antonio Levesque & Sons, Inc.*, Me. W.C.B. No. 21-29, ¶ 11 (App. Div. 2021); *Sawyer v. S.D. Warren*, Me. W.C.B. No. 19-30, ¶ 12 (App. Div. 2019); *Puiia v. NewPage Corp.*, Me. W.C.B. No. 17-36, ¶ 9 (App. Div. 2017); *Day v. S.D. Warren*, Me. W.C.B. No. 16-19, ¶ 8 (App. Div. 2016); *Oleson v. Int'l Paper*, Me. W.C.B. No. 14-29, ¶ 19 (App. Div. 2014); *Getchell v. Keyes Fibre Company*, Me. W.C.B. No. 91-60 (App. Div. 1991).

[4] Title 39-A M.R.S.A. § 306 has since been amended. P.L. 2001, ch. 435, §§ 1, 2 (effective Sept. 21, 2001); P.L. 2001, ch. 647, § 18 (effective July 25, 2002). The amendments do not apply in this case.

statute for other dates of injury if the payments are made with contemporaneous notice or knowledge that other dates of injury "contributed in some part" to the need for payments. *Pottle v. Bath Iron Works Corp.*, 551 A.2d 112, 114-15 (Me. 1988).

[¶17] For example, in *Klimas v. Great Northern Paper Co.*, 582 A.2d 256 (Me. 1990), the employee injured his right knee at work in 1974, and again in 1982. *Id.* at 257. In 1986, he filed a petition for benefits. *Id*. The insurer on the 1974 injury asserted the ten-year statute of limitations defense. *Id*. The Law Court interpreted *Pottle* to hold that the limitations period would be tolled only if payments made after the 1982 injury were made "with contemporaneous notice that they were made for treatment that was in part necessitated by the 1974 injury." *Id*. at 258. Because the commissioner had not made the critical finding whether the employer had notice when it made the payments, the Court remanded the case for additional findings. *Id*. at 258-59.

[¶18] The contract ALJ here found no persuasive evidence that New England Telephone made payments during the relevant period on the 2001 date of injury with the contemporaneous notice that those payments were also for the 1996 date of injury, finding that there was neither medical evidence nor testimony demonstrating such notice. Further, the contract ALJ examined the 2006 and 2011 board decisions and concluded that neither decision provided New England Telephone with notice consistent with *Pottle* and *Klimas*.

[¶19] Ms. Stovall argues that the contract ALJ's characterizations of the 2006 and 2011 decisions are unsupported by competent evidence. Because the 2001 injury was deemed an aggravation of the 1996 injury, she contends New England Telephone had contemporaneous notice that payments were being made for both dates of injury. Moreover, she contends the accepted memorandum of payment on the 1996 injury, filed in 2005, provides notice that all subsequent payments were made on the 1996 date of injury as a matter of law.

[¶20] New England Telephone argues that Ms. Stovall's choice to dismiss her claim regarding the 1996 injury at the hearing in 2006 means that the board decisions that followed related only to the 2001 date of injury and did not contain notice that subsequent payments related to both dates of injury. Further, New England Telephone argues that the Board's decision in 2006 served to supersede the accepted 2005 memorandum of payment and therefore the 2005 memorandum of payment ceased to carry any legal weight; that is, it is legally insufficient to provide contemporaneous notice.

[¶21] We find Ms. Stovall's arguments to be persuasive. In the 2006 decision, the contract hearing officer found that Ms. Stovall gave notice to New England Telephone on August 1, 2001, that "she had sustained a new injury/aggravation on

June 29, 2001 of her prior injury."[5] The contract hearing officer also relied upon and adopted the opinion of Dr. Cathcart, quoting the doctor's opinion in the decision that "Ms. Stovall had, in fact, suffered a new injury, namely, that there was now a significant aggravation of her underlying condition." In light of the findings in the 2006 decision, we conclude that the ALJ erred when determining that New England Telephone did not have contemporaneous notice that benefits paid and recorded under the 2001 injury date were made for treatment that was in part necessitated by the 1996 injury.

[¶22] We further reject New England Telephone's contrary argument, that the 2006 decision is legally inadequate to provide notice under *Pottle* because Ms. Stovall dismissed her petition regarding the 1996 date of injury. Nothing in the *Pottle* line of cases from the Law Court or the Appellate Division has required an active pleading or a board decision specifically related to a date of injury to demonstrate contemporaneous notice that benefit payments were necessitated in part due to another work injury. *See Flanagin v. State Dep't of Inland Fisheries and Wildlife*, Me. W.C.B. No. 14-22, ¶¶ 3, 22 (App. Div. 2014) (determining that a medical expert's report discussing a then unpled injury date was adequate to provide notice

[5] The contract ALJ misquoted this portion of the 2006 decision while analyzing whether the prior decisions contained *Pottle* notice and omitted reference to Ms. Stovall's "prior injury." The contract ALJ amended this misquotation after Ms. Stovall filed a motion to correct clerical error pursuant to 39-A M.R.S.A. § 318 but again did not accurately recite the text of the 2006 decision, finding instead that Ms. Stovall gave "notification to the employer that she had sustained an injury in 2001 which was either a new injury or an aggravation of the 1996 injury."

under *Pottle*). The decision did not need to resolve a causation dispute regarding the 1996 date of injury—it needed only demonstrate that New England Telephone had contemporaneous notice that payments made after the 2006 decision were in part necessitated by the 1996 injury.[6] The board's 2006 decision in this case establishes that the parties had notice and when.[7]

D. Ongoing Obligation to Pay Benefits

[¶23] New England Telephone further argues that the 2006 decision regarding the 2001 date of injury ended its obligation for the 1996 date of injury under the 2005 memorandum of payment. Ms. Stovall contends New England Telephone was not in compliance with the Act when it ceased making payments pursuant to the memorandum of payment.

[¶24] A memorandum of payment marked "your claim is accepted," serves the same legal function as a board decision on the merits of a claim. *See* 39-A M.R.S.A. § 205(7); Me. W.C.B. Rule, ch. 1, §§ 1(1)(A), 2(1); *cf. Libby v. Boise Cascade Corp.*, 1998 ME 89, ¶¶ 2, 8, 709 A.2d 737. Once a compensation payment

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[6] Additionally, because the contract ALJ's decision did not accurately recite the 2006 board decision on a dispositive point, we conclude that the decision regarding contemporaneous notice was not supported by competent evidence.

[7] Further, the memorandum of payment that was accepted in 2005 for the 1996 injury is independently sufficient to provide notice under *Pottle*. New England Telephone is bound to the factual predicate established in the 2005 memorandum of payment: that Ms. Stovall's 1996 injury contributed to her incapacity.

scheme has been entered, an employer under the Workers' Compensation Act may only discontinue benefits by filing a petition and receiving a decision from an ALJ. 39-A M.R.S.A. § 205(9)(B)(2).[8]

[¶25] New England Telephone created a compensation payment scheme when it filed the memorandum of payment for the 1996 injury on May 17, 2005, which established that Ms. Stovall's 1996 injury resulted in total incapacity to earn. To date, New England Telephone has not filed a petition that would meet the requirements of section 205(9)(B)(2) in order to contest its obligation for the 1996

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[8] Title 39-A M.R.S.A. § 205(9)(B)(2) provides:

> **9. Discontinuance or reduction of payments.** The employer, insurer or group self-insurer may discontinue or reduce benefits according to this subsection.
>
> . . . .
>
> **B.** In all circumstances other than the return to work or increase in pay of the employee under paragraph A, if the employer, insurer or group self-insurer determines that the employee is not eligible for compensation under this Act, the employer, insurer or group self-insurer may discontinue or reduce benefits only in accordance with this paragraph.
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> . . . .
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> **(2)** If an order or award of compensation or compensation scheme has been entered, the employer, insurer or group self-insurer shall petition the board for an order to reduce or discontinue benefits and may not reduce or discontinue benefits until the matter has been resolved by a decree issued by an administrative law judge. The employer, insurer or group self-insurer may reduce or discontinue benefits pursuant to such a decree pending a motion for findings of fact and conclusions of law or pending an appeal from that decree. Upon the filing of a petition, the employer may discontinue or reduce the weekly benefits being paid pursuant to section 212, subsection 1 or section 213, subsection 1 based on the amount of actual documented earnings paid to the employee after filing the petition. The employer shall file with the board the documentation or evidence that substantiates the earnings and the employer may discontinue or reduce weekly benefits only for weeks for which the employer possesses evidence of such earnings.

date of injury pursuant to the memorandum of payment. As such, it is required to pay benefits at the rate established by that memorandum of payment, from August 6, 2006, (when it ceased such payments), to the present and continuing, with a credit for benefits paid on Ms. Stovall's 2001 date of injury. *See Freeman v. NewPage Corp.*, 2016 ME 45, ¶ 7, 135 A.3d 340.

[¶26] Because New England Telephone's obligation to pay benefits "does not require the introduction of additional facts, its proper resolution is clear, and a failure to consider it may result in a miscarriage of justice[…]" we enter judgment for Ms. Stovall rather than remand the case for further proceedings. *Sebra v. Wentworth*, 2010 ME 21, ¶ 16, 990 A.2d 538 (quoting *Truman v. Browne*, 2001 ME 182, 788 A.2d 168); *see also, e.g., Mahar v. Blueberry Ford*, Me. W.C.B. No. 14-8, ¶ 5 (App. Div. 2014) (modifying the hearing officer's decision and entering judgment in part for the employee).

III. CONCLUSION

[¶27] While we affirm the contract ALJ's conclusion regarding *res judicata*, we vacate the decision on the statute of limitations. The decision's findings on the statute of limitations were not supported by competent evidence and as a matter of law, the undisputed evidence in this case demonstrates that New England Telephone had contemporaneous notice that it was paying benefits in part for the 1996 injury

within the period of repose. Because New England's payment obligation is solely a legal issue and the facts are not in dispute, we enter judgement for Ms. Stovall.

The entry is:

> The ALJ's decision is vacated, and judgment is entered for Ms. Stovall. New England Telephone is required to pay benefits at the rate established by the 2005 memorandum of payment, from August 6, 2006, to the present and continuing, with a credit for benefits paid on Ms. Stovall's 2001 date of injury.

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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