RANDALL YOUNG
(Appellant)

v.

MEAD WESTVACO CORP.
(Appellee)

and

MAINE SELF-INSURANCE GUARANTEE ASSOCIATION
(Insurer)

Decided: July 29, 2013
Conferenced: May 24, 2013

Panel Members: Hearing Officers Greene, Jerome, and Knopf
By: Hearing Officer Greene

[¶1] Randall Young appeals from a decision of a Workers' Compensation Board hearing officer (*Goodnough, HO*) denying his Petitions for Award and for Payment of Medical and Related Services related to 1981 and 1984 dates of injury on the grounds that (1) the petitions are barred by the ten-year period of limitations in 39 M.R.S.A. § 95 (1989),[1] and alternatively, (2) the retiree presumption in 39-A M.R.S.A. § 223 (2001) operated to preclude any award of incapacity benefits. We affirm the hearing officer's decision on statute of limitations grounds, and do not address the retiree presumption issue.

[1] Title 39 M.R.S.A. § 95 (1989) was repealed and replaced by P.L. 1991, ch. 885, §§ A-7, A-8 (effective January 1, 1993) codified at 39-A M.R.S.A § 306 (Supp. 2012). Section 306 has been amended several times since 1993, most recently by P.L. 2011, ch. 647, § 18 (effective Aug. 30, 2012).

I. BACKGROUND

[¶2] Randall Young, 64, began working at the Rumford paper mill at the age of eighteen. He worked several different physically demanding jobs at the mill, mainly as an oiler and a mechanic. He suffered injuries to his lower back in 1981 when moving a heavy metal skid, and in 1984 to his lower back and right leg when moving materials on a sheet of plywood. After the second injury, he lost some time from work, and returned to regular duty on July 2, 1985.

[¶3] Mr. Young was treated for low back pain sporadically in the years after his injuries, usually with the mill medical department. He worked full duty until 2004, when the mill doctor imposed temporary restrictions, which were lifted after five months. Mr. Young experienced a symptom flare-up in 2009, after which the mill doctor again imposed restrictions for a short period of time. He was referred to physical therapy in early 2010, but was no longer under work restrictions at that time.

[¶4] In May 2010, the mill was conducting co-generation outage work that required Mr. Young to perform physically demanding tasks that took a toll on his back. After working six consecutive twelve-hour night shifts, he began to consider retirement. He was eligible for full retirement at age 62, on August 2, 2010. He decided to take regular retirement as opposed to disability retirement because the benefit amount would be the same and he would not have to prove total disability.

He took his accumulated vacation time starting in July, and after 44 years at the mill, he officially retired on September 1, 2010.

[¶5] Mr. Young contends that he continues to experience symptoms and remains restricted due, at least in part, to the 1981 and 1984 back injuries. On August 15, 2011, he filed Petitions for Award and for Payment of Medical and Related services for both dates of injury. The employer filed a first report of injury for the 1984 date of injury on December 7, 1988, but did not do so for the 1981 injury until July 14, 2010. The employer asserted certain statutory defenses, including the statute of limitations and the retiree presumption.

[¶6] The hearing officer determined that the two-year limitations period under section 95 for filing a claim for the 1981 work injury had been tolled until the employer filed the first report of injury in 2010. However, the hearing officer further found that employer had last made payments for both dates of injury on April 9, 1998. Accordingly, he concluded that the ten-year period of repose in section 95 expired for both dates of injury on April 9, 2008, and because Mr. Young did not file his petitions until August 15, 2011, both claims were barred.

[¶7] In the alternative, the hearing officer determined that the retirement presumption in section 223 applied to bar any award of incapacity benefits because Mr. Young had terminated active employment and receives a non-disability pension.

[¶8] Both parties requested additional findings of fact and conclusions of law. The hearing officer issued additional findings, but did not alter the outcome. Mr. Young now appeals.

II. DISCUSSION

[¶9] Mr. Young concedes that his claims related to the 1984 injury are barred. He contends, however, that the ten-year period of repose in 39 M.R.S.A. § 95 does not preclude claims related to the 1981 injury because the payments were made without prejudice, and as such, they did not trigger the ten-year period. In addition, he asserts that the period of repose for the 1981 claim remained tolled until the employer filed a first report of injury in 2010. Addressing these issues requires us to construe the language of section 95.

[¶10] In construing a provision of the Workers' Compensation Act, the Appellate Division's purpose is to give effect to the legislative intent. *Jordan v. Sears, Roebuck & Co.*, 651 A.2d 358, 360 (Me. 1994). 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.* In addition to examining the plain language, 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." *Id.* (quotation marks omitted).

[¶11] The purpose of the Workers' Compensation Act's statute of limitations "is to reconcile an injured party's interest in compensation with the employer's interest in a terminal date to litigation." *Hird v. Bath Iron Works,* 512 A.2d 1035, 1036-37 (Me. 1986) (quoting *Pino v. Maplewood Packing Co*., 375 A.2d 534, 537 (Me. 1977)). The goal is "to provide eventual repose for potential defendants and to avoid the necessity of defending stale claims." *Langevin v. City of Biddeford*, 481 A.2d 495, 498 (Me. 1984).

[¶12] The applicable statute of limitations is found at 39 M.R.S.A. § 95 (1989). It provides, in relevant part:

> Any employee's claim for compensation under this Act shall be barred unless an agreement or petition . . . shall be filed within 2 years after the date of the injury, or, if the employee is paid by the employer or the insurer, without the filing of any petition or agreement, within 2 years of any payment by such employer or insurer for benefits otherwise required by this Act. The 2-year period in which an employee may file his claim does not begin to run until his employer, if the employer has actual knowledge of the injury, files a first report of injury as required by section 106 of the Act. . . . No petition of any kind may be filed more than 10 years following the date of the latest payment made under this Act. For the purposes of this section, payments of benefits made by an employer or insurer pursuant to section 51-B shall be considered payments under a decision, unless a timely notice of controversy has been filed.

[¶13] Section 95 contains two provisions regarding the effect of the payment of benefits on the tolling of the statute of limitations. The first, found in the opening sentence, provides: "if the employee is paid by the employer or the insurer, without the filing of any petition or agreement, [a petition shall be filed]

within 2 years of any payment by such employer or insurer for benefits otherwise required by this Act." The second, found in the next to last sentence, provides: "No petition of any kind may be filed more than 10 years following the date of the latest payment made under this Act."

[¶14] Pursuant to the first provision, when the employer makes a payment otherwise required by the Act without the filing of a petition or agreement, the employee does not have to file a claim within two years of the date of injury, but instead, must file the claim within two years of payment. The two year limitations period in section 95, whether triggered by the injury itself or by a payment, does not begin to run until the employer files a required first report of injury.

[¶15] The second provision places an "outside limit" on the filing of the claim of ten years from the date the last payment was made pursuant to the Act. *Harvie v. Bath Iron Works Corp.*, 561 A.2d 1023, 1024 (Me. 1989) (stating since shortly after the original enactment of section 95 by P.L. 1965, ch. 408, § 9, the "incarnations" of that statute have always included a ten-year statute "provid[ing] an outside limit in cases that were recognized exceptions to the two year limit"); *see also, e.g., Dahms v. Osteopathic Hosp. of Me.*, 2001 ME 145, ¶ 1 n.1, 782 A.2d 774 (referring to the longer period of limitation as a statute of repose).

[¶16] Mr. Young asserts that the ten-year period has not expired for his 1981 work injury because the payments for this injury were made without the

filing of a petition or agreement. The first sentence of section 95 specifies that payments made "without the filing of any petition or agreement" trigger the running of a two-year limitations period. Mr. Young contends the absence of similar language in the ten-year provision means that payments "without the filing of any petition or agreement" cannot independently trigger the running of the ten-year period. According to Mr. Young, if the latest payment without prejudice started the ten-year period, this would render the two-year period for filing a claim, and the tolling provisions for that two-year period, superfluous, and create a ten-year limitations period for all claims in which voluntary payments were made. He also contends that the Legislature's failure to specify that the ten-year period applies to payments made without prejudice suggests that it does not apply.

[¶17] However, by providing that no petition may be filed more than ten years following the date of the latest payment, the statute designates a ten-year "outside limit" for filing petitions when payments have been made, regardless of whether the payments were made with or without prejudice. *See Harvie*, 561 A.2d at 1024. The ten-year period under section 95 is triggered independently of the two-year period, and as such, it fulfills the general purposes of limitations provisions—to provide a terminal date to litigation and to avoid stale claims.

[¶18] Mr. Young also asserts that the policies noted by the Law Court in *Graves v. Brockway-Smith Co.*, 2012 ME 128, ¶ 18, 55 A.3d 456, support his

position that the ten-year period of repose in section 95 should not begin to run until the employer files a first report of injury. This contention, however, is not supported in the language of section 95.

[¶19] The legislative policy acknowledged in *Graves* and first expressed in the 1983 amendment to section 95—that employee rights under the Workers' Compensation Act should not be cut off by the two-year statute of limitations before the filing of a first report of injury prompts notification of those rights—is not similarly expressed in the applicable ten-year statute of repose. The 1983 amendment expressly referred to tolling the "2-year period in which the employee may file a claim," not the ten-year period.

[¶20] The Law Court held in *Graves* that the six-year, post-payment repose period in 39-A M.R.S. § 306(2) (2011), which at the time did not begin to run until a payment was made "within the [two-year] period provided in subsection 1," was not triggered until the employer filed a first report of injury. 2012 ME 128, ¶¶ 16-18, 55 A.3d 456. This was because the two-year period for bringing a petition in subsection 1 did not begin to run until a first report was filed. *Id.*; *see also Wilson v. Bath Iron Works*, 2008 ME 47, 942 A.2d 1237. The ten-year repose period in section 95 contains no similar limitation on the payments necessary for that period to commence.

[¶21] The plain language of the ten-year repose provision in section 95 precludes a petition from being "filed more than 10 years following the date of the latest payment made under this Act"—regardless of whether the two-year limitation period for filing a claim has expired. And, also pursuant to the plain language, the employer's failure to file a required first report of injury does not toll the running of the ten-year period.[2]

[¶22] Accordingly, we agree with the hearing officer that Mr. Young's claims for both the 1981 and 1984 dates of injury are barred.

III. CONCLUSION

The entry is:

The decision of the hearing officer 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 (Supp. 2012).

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[2] Mr. Young also contends that the hearing officer erred when applying the retiree presumption, 39-A M.R.S.A. § 223. Because our ruling on the statute of limitations issue is dispositive, we do not reach that issue.

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