DAVID GARRITY
(Appellant)

v.

ENGINEERED PRODUCTS, INC.[1]
(Appellee)

and

MEMIC
(Insurer)

Conference held: September 23, 2015
Decided: October 27, 2015

PANEL MEMBERS: Administrative Law Judges[2] Goodnough, Pelletier and Hirtle
BY: Administrative Law Judge Hirtle

[¶1] David Garrity appeals from a decision of a Workers' Compensation Board Administrative Law Judge (*Stovall, ALJ*) denying his Motion to Amend Lump Sum Settlement Approval as untimely. Mr. Garrity contends that when considering the motion, the administrative law judge (ALJ) should have followed a procedure similar to that authorized by M.R. Civ. P. 60(b) to allow amendment, or employed other equitable remedies. We disagree with these contentions, and affirm the ALJ's decision.

[1] The Employer/Insurer notified the Appellate Division that it takes no position regarding the Employee's appeal and would not be filing written argument.

[2] Pursuant to P.L. 2015, ch. 297 (effective October 15, 2015) Workers' Compensation Board hearing officers are now designated administrative law judges.

I. BACKGROUND

[¶2] David Garrity suffered an injury to his left knee and left hip on August 23, 2011, while working for Engineered Products. The parties entered into a lump sum settlement agreement regarding that injury, and presented the agreement to the ALJ for approval on April 7, 2014. Mr. Garrity's counsel, Mr. Garrity, and an employer representative appeared at the settlement hearing. The settlement amount was $225,000.00. The documents presented to the Board included an affidavit signed by Mr. Garrity affirming that he did not receive Medicare benefits and that he did not expect to receive Medicare benefits within 30 months of the settlement.[3] Mr. Garrity's counsel represented to the ALJ that Mr. Garrity had a residual work capacity and intended to return to work. The settlement was approved by the ALJ.

[¶3] Approximately eight months after the settlement, Mr. Garrity submitted his Motion to Amend. As grounds for the Motion, Mr. Garrity disclosed that he had applied for Social Security disability benefits, and was in the process of appealing. In order to maximize his potential award of those benefits, Mr. Garrity asked the ALJ to make an allocation of his settlement amount (less attorney's fees) over his statistical life expectancy. Engineered Products did not object to the motion.

[3] Mr. Garrity stated in the affidavit: "I represent and acknowledge that I do not receive Medicare benefits and that I do not expect to receive such benefits within 30 months of this settlement. I agree and acknowledge that Engineered Products Co. Inc. and MEMIC have made reasonable and diligent inquiry into my Medicare status and they and I have considered the interests of Medicare."

[¶4] By order dated February 4, 2015, the ALJ denied Mr. Garrity's Motion as untimely, without further explanation. Mr. Garrity now appeals. In his submission to the Appellate Division, Mr. Garrity states that he had already applied for Social Security disability benefits at the time of the April 7, 2014, lump sum settlement hearing, and he was awarded those benefits in January 2015. He further states that the award of Social Security disability benefits is being coordinated with the lump sum settlement of his workers' compensation claim at a disadvantageous rate because the settlement documents do not contain the allocation findings he requested with his Motion.

II. DISCUSSION

A. Standard of Review

[¶5] The role of the Appellate Division on appeal "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).

B. Denial of the Motion

[¶6] Mr. Garrity contends that when considering the Motion to Amend, the ALJ should have followed procedures similar to those prescribed by M.R. Civ. P.

60(b),[4] which allows for reopening a civil judgment on certain listed grounds within "a reasonable time" or within one year. Otherwise, he submits, he will be harmed by the continued application of the terms of the settlement to his situation. Moreover, he contends the ALJ erred by not inquiring into Mr. Garrity's Social Security disability status at the hearing, despite representations made on the record that Mr. Garrity fully intended to return to work.

[¶7] Preliminarily, we note that Mr. Garrity did not make these arguments to the ALJ in his Motion to Amend. Accordingly, he has forfeited consideration of these issues on appeal. *Severy v. S.D. Warren, Co.*, 402 A.2d 53, 56 (Me. 1979) ("Whether in the criminal or civil sphere, we have long adhered to the practice of declining to entertain arguments not presented to the original tribunal.").

[¶8] Even if we were to consider Mr. Garrity's arguments, we would conclude that they lack merit. There are some cases in which the Law Court has applied the Maine Rules of Civil Procedure by analogy to proceedings under the Workers' Compensation Act.[5] However, there is no precedent for wholesale importation of the standards and remedies contained in those Rules to board proceedings, and the ALJ was not required to apply them in this case.

[4] M.R. Civ. P. 60(b) provides for relief from judgment in cases of, among other things, mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, and fraud if brought by motion within a reasonable time or in some designated circumstances, within one year of the judgment.

[5] *See, e.g., Russell v. Duchess Footwear*, 487 A.2d 256, 260 (Dufresne, J., concurring) (Me. 1985); *see also Newell v. North Anson Reel Co.*, 214 A.2d 97, 99 (Me. 1965) (reasoning that a party may request an enlargement of time to file a responsive pleading consistent with, but not because of, the Rules of Civil Procedure).

[¶9] Moreover, "the rights of a party under the Workers' Compensation Act are purely statutory," *Guar. Fund Mgmt. Servs. v. Workers' Comp. Bd.*, 678 A.2d 578, 583 (Me. 1996) (quotation marks omitted); *see also Grubb v. S.D. Warren*, 2003 ME 139, ¶ 19, 837 A.2d 117, and equitable remedies are not available under the Act, *see Doucette v. Hallsmith/SYSCO Food Servs., Inc.*, 2011 ME 68, ¶ 21, 21 A.3d 99; *Hird v. Bath Iron Works Corp*., 512 A.2d 1035, 1037-38 (Me. 1986).

[¶10] Applicable to Mr. Garrity's circumstances, the Workers' Compensation Act contains statutory procedures for reopening ALJ-approved agreements in certain circumstances. Title 39-A M.R.S.A. § 321(1) (2001) allows agreements to be reopened at any time for mistake of fact or fraud. *See also* 39-A M.R.S.A. § 319 (2001) (permitting reopening of a decree to consider newly discovered evidence if a motion is filed within thirty days of the decree.) Mr. Garrity states that he is not seeking relief pursuant to these statutes. However, because these express provisions exist, we are constrained from formulating alternative remedies. *Doucette v. Hallsmith/SYSCO Food Servs., Inc.*, 2010 ME 138, ¶ 6, 10 A.3d 692; *Am. Mut. Ins. Cos. v. Murray*, 420 A.2d 251, 252 (Me. 1980).

III. CONCLUSION

[¶11] The hearing officer neither misconceived nor misapplied the law when denying the Employee's Motion to Amend Lump Sum Settlement Approval.

The entry is:

The hearing officer'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 (Supp. 2014).

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