

WANDA L. GALLANT  
(Appellant)

v.

MAINEGENERAL MEDICAL CENTER  
(Appellee)

and

CROSS INSURANCE  
(Insurer)

Conference held: April 11, 2019  
Decided: January 4, 2021

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

[¶1] Wanda Gallant appeals from a decision of a Workers' Compensation Board administrative law judge (*Elwin, ALJ*) granting in part Ms. Gallant's Petition for Award regarding a March 6, 2016, date of injury. The ALJ agreed with Ms. Gallant that she experienced a work-related injury and memorialized the parties' agreement as to the amount of benefits owed for her period of incapacity due to the work injury. However, the ALJ rejected Ms. Gallant's argument that the ALJ had the statutory authority to order MaineGeneral Medical Center to credit her award of incapacity benefits back to an employer-maintained bank of earned time off that Ms. Gallant had drawn from during the absence caused by her work related injury. Ms.

Gallant argues that the ALJ erred in this finding and that ALJs of the board have the authority to grant her requested relief. We disagree and affirm the decision.

## I. BACKGROUND

[¶2] Wanda Gallant injured her back on March 6, 2016, while working as a CNA in a long term care facility operated by MaineGeneral Medical Center. Ms. Gallant was out of work because of her injury for approximately 20 days and MaineGeneral Medical Center denied any obligation to pay incapacity benefits under the Workers' Compensation Act. Instead, Ms. Gallant received payments from an employer-maintained bank of earned time.

[¶3] Ms. Gallant filed her Petition for Award under the Workers' Compensation Act seeking incapacity benefits for missed time from work pursuant to 39-A M.R.S.A. § 213 (Pamph. 2020). When that petition reached an ALJ of the Workers' Compensation Board, the parties agreed that Ms. Gallant had experienced a work-related injury as alleged and agreed upon the amount of incapacity benefits due Ms. Gallant under the Workers' Compensation Act for her time out of work. However, Ms. Gallant asked the ALJ to order MaineGeneral Medical Center to let her use the award of incapacity benefits under the Act to buy back the earned time benefits she had withdrawn from her employer-maintained bank of earned time. MaineGeneral Medical Center opposed this request arguing that it was contrary to the organization's policies regarding earned time and that the requested relief was

not authorized under the Workers' Compensation Act. Agreeing with the latter argument, the ALJ denied Ms. Gallant's requested relief and instead ordered MaineGeneral Medical Center to pay Ms. Gallant the agreed upon amount of incapacity benefits.

[¶4] Ms. Gallant filed a motion for further findings of fact and conclusions of law pursuant to 39-A M.R.S.A. § 318 (Pamph. 2020) that the ALJ dismissed because Ms. Gallant did not file proposed findings of fact and conclusions of law. The pending appeal followed.

## II. DISCUSSION

### A. Standard of Review

[¶5] Generally, 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 Ms. Gallant did not submit proposed findings of fact and conclusions of law pursuant to 39-A M.R.S.A. § 318, the Appellate Division will treat the board "as having made whatever factual determination could, in accordance with correct legal concepts, support [its] ultimate decision, and we inquire whether on the evidence such factual determinations must be held clearly erroneous." *Daley*

*v. Spinnaker Indus.*, 2002 ME 134, ¶ 17, 803 A.2d 446; *Bowie v. Delta Airlines*, 661 A.2d 1128, 1132 (Me. 1995) (addressing when a motion for findings is dismissed for failure to file proposed findings of fact and conclusions of law).

B. Authority for Ms. Gallant’s Urged Remedy

[¶6] Workers’ compensation claims are created by statute and any relief sought in such a claim must fall within the Legislature’s statutory framework or rules adopted by the Board pursuant to its statutory rule making authority. *Clark v. Int’l Paper Co.*, 638 A.2d 65, 66 (Me. 1994); 39-A M.R.S.A. § 153 (Pamph. 2020) (granting rule making authority).

[¶7] Neither the Legislature, the Law Court, nor the board has addressed an ALJ’s authority to order Ms. Gallant’s requested remedy. Instead, Ms. Gallant argues that a board ALJ has the implied authority to grant her requested remedy based on language in the Law Court’s decision in *Clark*, 638 A.2d 65, and the statutory language of 39-A M.R.S.A. §§ 205, 305, 318, and 324 (2001 & Pamph. 2020). The Law Court stated in *Clark* that ALJs have “only such authority as is conferred upon [them] by express legislative grant or such as arises therefrom by implication as incidental to full and complete exercise of the powers granted.” *Clark*, 638 A.2d at 66 (quotation marks omitted). From the “by implication” language, Ms. Gallant argues that statutory language regarding the following topics grants ALJs authority to order MaineGeneral Medical Center to let her buy back earned time with

her workers' compensation benefits: (1) an employee's authority to designate the address for weekly incapacity benefits under 39-A M.R.S.A. § 205; (2) the board's authority to make findings upon a petition for award "as to the responsibility of an employer for the payment of compensation" under 39-A M.R.S.A. § 305; (3) the broad authority granted an ALJ to "in a summary manner decide the merits of the controversy" pursuant to 39-A M.R.S.A. § 318; and (4) an employer's statutory obligation to "make compensation payments within ten days" pursuant to 39-A M.R.S.A. § 324. Ms. Gallant argues that the collective implication of these statutes is that a board ALJ may order MaineGeneral Medical Center to accept her award of incapacity benefits and buy back earned time in the employer maintained earned time bank. While surely a creative piece of advocacy, we find insufficient persuasive weight to this statutory interpretation.

[¶8] Rather, we find no reversible error in the ALJ's conclusion that neither statute, board rule, case law, nor implication from the former sources grants an ALJ the equitable power to craft Ms. Gallant's urged remedy in this case.

### III. CONCLUSION

[¶9] The ALJ's decision that the board was without authority to grant Ms. Gallant's urged relief did not involve a 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.

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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.

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