ROBERT PLOURDE

(Appellee)

v.

HUHTAMAKI, INC.
(Appellant)

and

GALLAGHER BASSETT SERVICES, INC.
(Insurer)

Conference held: May 6, 2020
Decided: June 30, 2021

PANEL MEMBERS: Administrative Law Judges Chabot, Collier, and Stovall
By: Administrative Law Judge Stovall

[¶1] Huhtamaki, Inc., appeals from a decision of a Workers' Compensation Board administrative law judge (*Hirtle, ALJ*) granting Robert Plourde's Petition for Award. Huhtamaki asserts that the ALJ erred by (1) taking administrative notice of a first report of injury that was in the board file after the evidence had closed and the parties had submitted final position papers, and (2) determining that statute of limitations did not bar the petition alleging a May 25, 2016, date of injury.[1] We disagree with Huhtamaki's contentions and affirm the ALJ's decision.

[1] Mr. Plourde had alleged two dates of injury. The first date claimed was February 10, 2016. The ALJ denied that claim due to lack of evidence, and that determination is not disputed on appeal.

I. BACKGROUND

[¶2] Robert Plourde's work history involved over 20 years of heavy lifting; first as a union carpenter and millwright, then as a maintenance mechanic for Huhtamaki, Inc. In November of 2014, Mr. Plourde went out of work due to a cardiac condition. He returned to his regular job duties in January of 2015. On January 27, 2015, Mr. Plourde reported to his doctor that he was having low back pain. On February 18, 2015, he informed his doctor that his back pain had worsened since he returned to work. An MRI documented severe degenerative changes in Mr. Plourde's spine.

[¶3] Mr. Plourde sought treatment again on February 5, 2016. He underwent nerve conduction testing, which indicated that he had a five to ten-year history of progressive back issues. Dr. Waterman, a neurosurgeon, diagnosed the employee with severe foraminal and lateral recess stenosis due to overgrowth of bone, and degenerative disc and joint disease. The employee underwent fusion surgery on May 25, 2016. Before going out of work for that surgery, he had filled out disability benefit forms from Huhtamaki listing his low back condition as non-work related.

[¶4] Mr. Plourde was totally disabled from May 25 until September 26, 2016, when he regained partial earning capacity. However, ongoing restrictions precluded him from returning to his job with Huhtamaki. Shortly thereafter, he was hired as a

custodian with Penobscot Valley High School, where he has worked since, earning significantly less than at his maintenance mechanic job.

[¶5] On April 13, 2018, Mr. Plourde spoke with an attorney about applying for Social Security disability benefits. At that meeting, he became aware that his back condition may be work-related when his attorney explained the concept of a gradual injury and that he may have sustained such an injury over time due to his work. Mr. Plourde provided notice to Huhtamaki on that same day. Huhtamaki filed a first report of injury on June 1, 2018, for the May 25, 2016, gradual injury.

[¶6] The employee filed his Petition for Award on June 4, 2018, alleging a May 25, 2016, date of injury. Among other arguments, Huhtamaki asserted that the employee's petition is barred because he provided notice of his injury beyond the 30-day statutory deadline and filed his Petition after the two-year statute of limitations had expired. *See* 39-A M.R.S.A. §§ 301, 306 (Pamph. 2020).

[¶7] The employee underwent an independent medical examination with Dr. Guernelli on January 28, 2019. *See* 39-A M.R.S.A. § 312 (Pamph. 2020). Dr. Guernelli opined that Mr. Plourde's asymptomatic degenerative disc disease was significantly aggravated over the years by both his work as a millwright and as a maintenance mechanic for Huhtamaki.

[¶8] A hearing was held on March 18, 2019. At that time the parties submitted a joint medical stipulation and multiple exhibits into the record. The case was ready

for a decision in April of 2019; however, the parties requested that the ALJ hold off issuing a decree to allow the parties more time to resolve their dispute without the need of a decision. The negotiations were unsuccessful. During a conference of counsel on June 18, 2019, Mr. Plourde asked the ALJ to take administrative notice of the First Report of Injury dated June 1, 2018, noting the May 25, 2016, date of injury, and a Notice of Controversy filed on June 22, 2018. Both documents were in the board's file. Huhtamaki objected to the request but the ALJ overruled the objection. The ALJ accepted further written arguments from the parties, and the case was ready for decision on June 26, 2019.

[¶9] The ALJ issued the original decree on July 8, 2019, granting the Petition for Award for the May 2016 date of injury. Upon request for further findings of fact and conclusions of law, the ALJ authored an amended decree dated September 24, 2019. Based on Mr. Plourde's credible testimony, the ALJ found that Mr. Plourde was unaware that he sustained a work-related gradual injury until he spoke with an attorney on April 13, 2018. Further, the ALJ found Mr. Plourde's disability form, in which he indicated that his condition was nonwork related, to be persuasive evidence establishing that he did not know his condition was work related until April 13, 2018.

[¶10] Thus, due to Mr. Plourde's mistake of fact, the ALJ found that the statutory, 30-day notice period did not begin to run until Mr. Plourde became aware of the work-relatedness of his injury on April 13, 2018. *See* 39-A M.R.S.A. § 302

(Pamph. 2020). The ALJ further determined that the two-year statute of limitations began to run on June 1, 2018, the date on which Huhtamaki filed the required first report of injury for the May 26, 2016, date of injury. *See* 39-A M.R.S.A. § 306 (Pamph. 2020).[2] Thus, the ALJ concluded that notice was timely provided and the petition was timely filed. This appeal followed.

II. DISCUSSION

A. Standard of Review

[¶11] 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). 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

[2] Title 39-A M.R.S.A. § 306 provides that "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 required first report of injury if required in section 303, whichever is later."

The ALJ also noted that 39-A M.R.S.A. § 306(5) could have been the basis for a finding that the statute of limitations had not expired. Section 306(5) provides:

> **Mistake of fact.** If an employee fails to file a petition within the limitation period provided in subsection 1 because of mistake of fact as to the cause or nature of the injury, the employee may file a petition within a reasonable time, subject to the 6-year limitation provided in subsection 2.

standards actually applied" by the ALJ. *Daley v. Spinnaker Indus., Inc.*, 2002 ME 134, ¶ 17, 803 A.2d 446 (quotation marks omitted). The ALJ's findings of fact are not subject to appeal. 39-A M.R.S.A. § 321-B(2) (Pamph. 2020).

[¶12] Huhtamaki contends that the ALJ had no authority to admit the June 1, 2018, first report of injury into evidence after the hearing, citing authority that places limits on the ALJ's discretion to admit evidence, including 39-A M.R.S.A. § 309(2), (authorizing the board to "admit evidence if it is the kind of evidence on which reasonable person are accustomed to relying in the conduct of serious affairs"); 39-A M.R.S.A. § 318 ("From the evidence or statements furnished, the administrative law judge shall in a summary manner decide the merits of the controversy"); and Me. W.C.B. Rule ch. 12, § 13(1) (providing that in the absence of an agreed-upon duration of the hearing, "the case will be set for 60 minutes for the receipt of all testimony and evidence"). Because the first report was not furnished during the temporal limits set by these provisions, Huhtamaki contends it was error for the ALJ to consider it.

[¶13] We find nothing in these authorities that prohibits an ALJ from taking administrative notice of documents in the board file at any time during the proceedings.

[¶14] The doctrine of judicial notice, or in this context, administrative notice, is well established in Maine. The ALJ properly relied on Rule 201 of the Maine

Rules of Evidence for guidance when deciding to take notice of the first report. *See Estate of Sullwold v. The Salvation Army,* Me. W.C.B. No. 13-13, ¶¶ 20, 21 (App. Div. 2013) (determining that section 309(2) authorizes the ALJs to take guidance from the Maine Rules of Evidence when conducting proceedings). Rule 201 defines the type of adjudicative facts that may be judicially noticed and when they many be noticed as follows:

> **(b) Kinds of facts that may be judicially noticed.** The court may judicially notice a fact that is not subject to reasonable dispute because it:
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> (1) Is generally known within the trial court's territorial jurisdiction; or
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> (2) Can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.
>
> **(c) Taking notice.** The court:
>
> (1) May take judicial notice on its own; or
>
> (2) Must take judicial notice if a party requests and the court is supplied with the necessary information.
>
> **(d) Timing.** The court may take judicial notice at any stage of the proceeding.
>
> **(e) Opportunity to be heard.** On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.

M.R. Evid. 201. We find no error in the ALJ's decision to take administrative notice of the first report of injury.

[¶15] As to the employer's second and third contentions, that Mr. Plourde's claim is barred due to untimely notice and the late filing of this petition, the ALJ found that Mr. Plourde became aware that his back condition may be work-related on April 13, 2018, when his attorney explained the concept of a gradual injury and that he may have sustained such an injury over time due to his work. "On the basis of this testimony, the [ALJ] could find that [the employee] did not perceive a relationship between his back ailments and the incident at work." *Dunton v. E. Fine Paper Co.*, 423 A.2d 512, 517 (Me. 1980). "'A mistake of fact takes place either when some fact which really exists is unknown or some fact is supposed to exist which really does not exist.'" *Brackett's Case*, 126 Me. 365, 368, 138 A. 557, 558 (1927) (quoting *Scott v. Ford*, 45 Ore. 531, 78 P. 742 (1905)).

[¶16] In *Jensen*, the Law Court reiterated the effect a "mistake of fact" has on the notice and petition filing requirements.

> The "mistake of fact" provision in the statute of limitations establishes an exception to the two-year limit when an injury, or its cause, is not recognized due to a mistake of fact. *Pino v. Maplewood Packing Co*., 375 A.2d 534, 537 (Me. 1977). The exception applies in "those situations where the injury is latent or its relation to the accident unperceived[, and does] [sic] not include instances where . . . the employee knows of the injury and its cause." *Id.* "A mistake of fact takes place either when some fact which really exists is unknown or some fact is supposed to exist which really does not exist." *Brackett's Case*, 126 Me. 365, 368, 138 A. 557, 558 (1927) (quotation marks omitted). The filing and notice periods are tolled because "when there is [a] 'mistake of fact as to the cause and nature of the injury,' it would be unfair to bar the claim because the employee is unaware of it." *Pino*, 375 A.2d at 537.

> A failure to connect medical problems to a work-related cause constitutes a mistake of fact sufficient to extend the notice and limitations periods.

Jensen v. S.D. Warren Co., 2009 ME 35, ¶¶ 17,18, 968 A.2d 528.

[¶17] We find no error in the ALJ's determination that neither late notice nor the two-year statute of limitations barred Mr. Plourde's petition alleging a May 26, 2016, date of injury.

III. CONCLUSION

[¶18] The ALJ committed no legal error, the factual findings are supported by competent evidence, and the application of the law is 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 (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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