JEFFREY L. RICH
(Appellant)

v.

MAINE TURNPIKE AUTHORITY
(Appellee)

and

CNA INSURANCE COMPANY
(Insurer)

Argued: September 21, 2017
Decided: May 15, 2019

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

[¶1] Jeffrey L. Rich appeals from a Workers' Compensation Board administrative law judge (*Knopf, ALJ*) decision determining that his Petitions for Award and for Payment of Medical and Related Services for a 1979 work-related injury are barred by the statute of limitations. Mr. Rich contends that the ALJ erred when failing to conclude that certain payments made by the Maine Turnpike Authority's medical insurance program for treatment in 2006 or 2007 tolled the statute. We affirm the decision.

I. BACKGROUND

[¶2] Jeffrey Rich, an employee of the Maine Turnpike Authority (MTA), sustained a work injury in September of 1979 in which he was severely burned on

his left arm, hip, and leg. Shortly after his discharge from the hospital, he developed symptoms in his right leg and was diagnosed with phlebitis, for which he was again hospitalized. He was out of work for approximately six months and received workers' compensation incapacity benefits. Mr. Rich ultimately returned to his regular duties at the MTA.

[¶3] Mr. Rich treated for blood clots and recurrent phlebitis in the 1980s and 1990s. The MTA's workers' compensation carriers, Continental Insurance Company (CIC) and CNA Insurance Company, paid for this medical treatment. CIC and CNA merged in May of 1995, and CNA made the payments from that point forward. CNA's records reflect that the last payment occurred on May 29, 1997.

[¶4] In 2006 Mr. Rich began treating for ulcers on his legs. He testified that he told the doctor's office that the problem was work-related, but provided his health insurance card for payment. The MTA participated in the State of Maine's health insurance program for its employee health insurance. The State is self-insured for health insurance, but the plan is administered by Anthem. Anthem paid the bills for Mr. Rich's treatment in 2006 and 2007. Mr. Rich was out of work from December 2006 to August 2007. The ALJ found that Mr. Rich "explained to his employer, in late 2006, only that he was going out of work as a result of the ulcers on his legs." He received income protection benefits through the union while he was out on medical leave.

[¶5] Mr. Rich retired from the MTA in 2009. In April of 2014 he filed petitions seeking compensation. The ALJ determined that Mr. Rich's claims were barred by the statute of limitations. After Mr. Rich filed a Motion for Additional Findings of Fact and Conclusions of Law, the ALJ issued an amended decision, but did not alter the determination. Mr. Rich appeals.

II. DISCUSSION

A. Standard of Review

[¶6] The Appellate Division's role on appeal is "limited to assuring that the [ALJ's] factual 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." *Pomerleau v. United Parcel Serv.*, 464 A.2d 206, 209 (Me. 1983). "When construing provisions of the Workers' Compensation Act, our purpose is to give effect to the Legislature's intent." *Hanson v. S.D. Warren Co.*, 2010 ME 51, ¶ 12, 997 A.2d 730. "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*. 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." *Davis v. Scott Paper Co*., 507 A.2d 581, 583 (Me. 1986).

B. Statute of Limitations

[¶7] The applicable statute of limitations provides, in relevant part: "No petition of any kind may be filed more than 10 years following the date of the latest payment *made under this Act*." 39 M.R.S.A. § 95 (emphasis added).

[¶8] Mr. Rich contends that the ALJ misconceived the law when determining that the statute of limitations barred his claims because the record shows that MTA had knowledge that the 2006 and 2007 payments were for the 1979 work injury, and therefore, those payments extended the limitations period. He cites a line of decisions holding that payments expressly made for one work injury with contemporaneous knowledge that they were also made, at least in part, for another injury, extend the limitations period for both injuries. *See Klimas v. Great N. Paper Co*., 582 A.2d 256, 258 (Me. 1980); *Lister v. Roland's Service, Inc.,* 1997 ME 23, ¶ 5, 690 A.2d 491; *Flanagin v. St. of Me. Dep't of Inland Fisheries & Wildlife*, Me. W.C.B. No. 14-22, ¶ 10 (App. Div. 2014). We disagree with Mr. Rich's contention.

[¶9] First, the ALJ was not persuaded that the medical records or Mr. Rich's testimony established that MTA had knowledge that Mr. Rich's problems in 2006 and 2007 were caused by or related to his 1979 work injury. These finding have a rational basis in the record, and we do not disturb them.

[¶10] Second, even if we were to accept the argument that because the MTA participated in the State's self-insured health insurance plan, as a State-related entity

it had contemporaneous knowledge that the 2006-2007 payments were for the 1979 work injury, this alone does not extend the limitations period. Unlike the *Lister* line of cases, here there is only one work injury, and the issue here is not whether the MTA had knowledge that payments made related to more than one injury, but whether payments made pursuant to the health insurance plan constituted payments made "under [the Workers' Compensation] Act." The ALJ concluded that they do not, citing *Deabay v. St. Regis Paper Co.*, 442 A.2d 963 (Me. 1982).

[¶11] In *Deabay*, the Law Court held that payments made by a health insurer could not be construed as payments made by the employer or its workers' compensation insurer for purposes of tolling the statute of limitations because the health insurer was not synonymous with the employer or the workers' compensation insurer. *Id.* at 964. The Court reasoned that the term "insurer" in the statute of limitations clearly contemplated workers' compensation carriers; payments made by the health insurer were not made pursuant to requirements of the Workers' Compensation Act; and the health insurer's liability was entirely independent from whatever liability the employer incurred under the Act. *Id*.[1]

[1] The MTA also cites *Moreau v. S.D. Warren Co.*, 2000 ME 62, ¶ 9, 748 A.2d 1001, for its holding that in-house medical treatment provided by the employer did not extend the limitations period because it was not a payment "under [the Workers' Compensation] Act." *Moreau*, although applicable to this case, has been legislatively overruled for cases after the amendment's effective date. P.L. 2001, ch. 435, § 1, codified at 39-A M.R.S.A. § 306(2) (effective Sept. 21, 2001).

[¶12] Mr. Rich contends that *Deabay* is distinguishable because the MTA is (arguably) a State entity that was self-insured for health insurance at that time, and thus the payments were made not by a health insurer but by the employer itself. An *en banc* panel of the Appellate Division disagreed with a similar argument in *Noll v. LePage Bakeries, Inc.*, Me. W.C.B. No. 16-25 (App. Div. 2016) (overruled on other grounds by *Bourgoin v. Twin Rivers Paper Co., LLC*, 2018 ME 77, ¶ 30, 187 A.3d 10).

[¶13] In *Noll*, the employer asserted the converse of Mr. Rich's argument—that a self-insured employer making medical payments pursuant to the Workers' Compensation Act was a "private health insurer" for purposes of the Maine Medical Use of Marijuana Act, *id.* ¶ 17, which provides that a "private health insurer" cannot be required "to reimburse a person for costs associated with the medical use of marijuana," 22 M.R.S.A. § 2426(2)(A) (Supp. 2018). The employer contended that a self-insured employer's obligation under the Workers' Compensation Act is the same as that of a private health insurer—paying for medical services—thus, like private health insurers, it should not be required to reimburse the employee for medical marijuana costs incurred due to a work injury. *Noll*, Me. W.C.B. No. 16-25, ¶ 17.

[¶14] The Appellate Division rejected this argument. Based on *Deabay*, the panel concluded that "the plain meaning of 'private health insurer' in 22 M.R.S.A.

§ 2426(2)(A) does not include an employer who is self-insured for purposes of workers' compensation," noting, among other things, the statutory distinctions between health insurance and workers' compensation insurance. *Id.* ¶¶ 19-22.

[¶15] Similarly, we conclude that payments made "under [the Workers' Compensation] Act" do not include health insurance payments, even if the employer is self-insured for health insurance because the language in section 95 plainly contemplates workers' compensation payments; payments made by the MTA's health insurance program were not made pursuant to requirements of the Workers' Compensation Act; and MTA's liability under its self-insured health insurance program was entirely independent from whatever liability it incurred under the Act. Consequently, the health insurance payments in 2006 and 2007 did not serve to restart the limitations period for the 1979 work injury.

III. CONCLUSION

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 (Supp. 2018).

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.

Attorneys for Appellant:
James J. MacAdam, Esq.
Nathan A. Jury, Esq.
Donald M. Murphy, Esq.
MacADAM JURY, P.A.
45 Mallett Drive
Freeport, ME 04032

Attorney for Appellee:
Cara Biddings, Esq.
ROBINSON, KRIGER & McCALLUM
Twelve Portland Pier
Portland, ME 04101