

THE ESTATE OF J. MICHAEL BOYLE, SR.
AND FAYE BOYLE
(Appellants)

v.

LAPPIN BROTHERS, INC.
(Appellee)

and

ACE INSURANCE CO.
(Insurer)

Argued: September 20, 2023
Decided: November 13, 2023

PANEL MEMBERS: Administrative Law Judges Rooks, Chabot, and Stovall
BY: Administrative Law Judge Chabot

[¶1] Faye Boyle and the Estate of J. Michael Boyle, Sr., (the Estate) appeal a decision from a Workers' Compensation Board administrative law judge (*Elwin, ALJ*) denying the Estate's Petition for Order of Payment, by which the Estate sought a ruling regarding Lappin Brothers' obligation to pay its proportionate share of the cost of collecting a third-party settlement, including reasonable attorney's fees. *See* 39-A M.R.S.A. § 107.¹ The Estate contends that the ALJ erred when concluding that

¹ Title 39-A M.R.S.A. § 107 provides, in relevant part:

When an injury or death for which compensation or medical benefits are payable under this Act is sustained under circumstances creating in some person other than the employer a legal liability to pay damages, the injured employee may, at the employee's option, either claim the compensation and benefits or obtain damages from or proceed at law against that other person to recover damages.

If the injured employee elects to claim compensation and benefits under this Act, any employer having paid the compensation or benefits or having become liable for

she did not have jurisdiction to enforce a prior decree, the prior decree contained no enforceable order to pay the costs, and doctrine of *res judicata* prevented a determination of its proportionate share of the costs of collection. We remand the decision for further findings of fact.

I. BACKGROUND

[¶2] On November 8, 1977, Mr. Boyle sustained a work-related back injury that disabled him and for which he was paid total incapacity benefits from the date of that injury until his death on June 27, 2010.

[¶3] In April of 2009, Mr. Boyle was diagnosed with mesothelioma caused by exposure to asbestos while working for multiple employers over his career as a union pipefitter. Under the Workers' Compensation Act, "the only employer and insurance carrier liable [for asbestos related disease] is the last employer in whose employment the employee was last injuriously exposed to asbestos, and the insurance carrier, if any, on the risk when the employee was last so exposed under that employer." 39-A M.R.S.A. § 614(4). In a previous round of litigation, the board (*Greene, HO*) established that Mr. Boyle's last injurious exposure occurred in 1977

compensation or benefits under any compensation payment scheme has a lien for the value of compensation paid on any damages subsequently recovered against the 3rd person liable for the injury. . . .

If the employee or the employee's beneficiary recovers damages from a 3rd person, the employee shall repay to the employer, out of the recovery against the 3rd person, the benefits paid by the employer under this Act, less the employer's proportionate share of cost of collection, including reasonable attorney's fees.

while he was employed by Lappin Brothers. This was affirmed by a panel of the Appellate Division, and the case was remanded for a determination of the remaining issues in the case. *Estate of Boyle v. Lappin Bros.*, Me. W.C.B. No. 17-8 (App. Div. 2017) (hereinafter “Boyle I”).

[¶4] On November 5, 2019, the board (*Elwin, ALJ*) issued two decrees: A Final Amended Decision on Remand, and a Decision on Petition for Payment of Medical and Related Services. The ALJ determined that Mr. Boyle died due to mesothelioma caused by workplace exposure to asbestos, and that the claimed medical expenses were reasonable and necessary, except one bill. *See* 39-A M.R.S.A. § 206. However, the ALJ further determined that Lappin Brothers had no further obligation to the Estate or Ms. Boyle for medical expenses, indemnity benefits, death benefits, or interest because (1) Mr. Boyle had been paid all incapacity benefits to which he was entitled through the date of his death; (2) the Estate received third-party settlement proceeds which exceed the amount of Lappin Brothers’ potential liability under the Act; and (3) Lappin Brothers has a lien against the settlement proceeds coextensive with its liability under the Act, 39-A M.R.S.A. § 107. The decree further states: “Employer/Insurer’s only obligation is to pay its proportionate share of the Estate’s cost of collection, including reasonable attorney’s fees.”

[¶5] The Estate appealed the determination that Lappin Brothers had a lien against the settlement proceeds on the basis that those proceeds were not collected from the manufacturer of the asbestos product involved in Mr. Boyle’s exposure at Lappin Brothers. The Appellate Division disagreed and affirmed the decision. *Estate of Boyle v. Lappin Bros.*, Me. W.C.B. No. 22-14 (App. Div. 2022) (hereinafter “Boyle II”). To date, Lappin Brothers has not paid the Estate any portion of the costs of collection of the settlement proceeds.

[¶6] While the appeal on Boyle II was pending, the Estate filed a Petition for Order of Payment requesting enforcement of the 2019 decrees, specifically requesting that Lappin Brothers be ordered to pay its proportionate share of the costs of collection of the third-party settlement pursuant to 39-A M.R.S.A. § 107, and an assessment of penalties. The ALJ determined that she did not have jurisdiction to enforce or clarify the 2019 decree, and that the 2019 decree was not sufficiently specific to support an order of payment. The Estate filed a Motion for Findings of Fact and Conclusions of Law, which the ALJ denied. This appeal followed.

II. DISCUSSION

A. Standard of Review

[¶7] 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). The Appellate Division will not disturb a factual finding made by the ALJ absent a showing that it lacks competent evidence to support it. *Dunkin Donuts of Am., Inc. v. Watson*, 366 A.2d 1121, 1125 (Me. 1976). Because the Estate requested findings of fact and conclusions of law following the decision, the Appellate Division will “review only the factual findings actually made and the legal standards actually applied by the [ALJ].” *Daley v. Spinnaker Indus., Inc.*, 2002 ME 134, ¶ 17, 803 A.2d 446 (quotation marks omitted).

B. Jurisdiction

[¶8] The ALJ denied the petition for Order of Payment, reasoning that the board has no statutory authority to enter an order enforcing its own decree. *See Toomey v. City of Portland*, 396 A.2d 1029, 1032 (Me. 1979). The ALJ further ruled that the decree lacks the specificity required for enforcement.

[¶9] Although we agree that the power to enforce a decree rests exclusively in the Superior Court pursuant to 39-A M.R.S.A. § 323, we view the Petition for Order of Payment differently. By the petition, the Estate sought more than an order of payment. Lappin Brothers denied that the decree made it responsible to pay any portion of the costs of collection of the third-party settlement, and accordingly had not paid anything to the Estate. Thus, the Estate filed the petition requesting

clarification regarding the parties' rights and responsibilities pursuant to the 2019 decree, *see* 39-A M.R.S.A. § 307. The Estate asserted that the decree required Lappin Brothers to pay its share of those costs but left the question of the amount unresolved. The Estate also requested penalties for Lappin Brothers' failure to pay.

[¶10] The Law Court has held that the board has authority to determine the parties' rights under section 107. *Dionne v. Libby-Owens Ford Co.*, 565 A.2d 657, 658 (Me. 1989).² Moreover, the Appellate Division has reviewed decisions in which the ALJ resolved disputes regarding the meaning of prior decrees, even after the period for further findings or appeal has expired. For example, in *Puiia v. Meadwestvaco Corp.*, Me. W.C.B. No. 20-09, ¶ 14 (App. Div. 2020), an Appellate Division panel affirmed an ALJ's interpretation regarding the specific dollar amount of 100% incapacity benefits ordered in a prior decree. *See also Eaton v. S.D. Warren Co.*, Me. W.C.B. No. 19-08, ¶ 12 (App. Div. 2019) (affirming a decision in which an ALJ interpreted an ambiguity in an earlier decree regarding whether a benefit payment should be based on the employee's 1983 or 1998 average weekly wage).

[¶11] Accordingly, we conclude that although the ALJ correctly ruled that she could not issue an order enforcing the judgment, there is no statutory barrier

² In *Dionne*, the parties disagreed on how to apply section 107 to an annuitized settlement. *Id.*

preventing the ALJ from resolving this post-decree dispute regarding the amount of the section 107 lien and Lappin Brothers' proportionate share of costs of collection.

C. Res Judicata

[¶12] Lappin Brothers argues that the doctrine of res judicata bars litigation regarding the Estate's section 107 rights pursuant to the 2019 decree. We disagree.

[¶13] Valid and final decisions of the Workers' Compensation Board are subject to the general rules of res judicata and issue preclusion. *Grubb v. S.D. Warren Co.*, 2003 ME 139, ¶ 9, 837 A.2d 117. The doctrine of res judicata may bar "the relitigation of issues that were tried, or that may have been tried, between the same parties or their privies in an earlier suit on the same cause of action." *Blance v. Alley*, 1997 ME 125, ¶ 4, 697 A.2d 828 (quotation marks omitted). In Workers' Compensation proceedings, res judicata is generally read narrowly to preclude only issues actually litigated. *See Spencer's Case*, 123 Me. 46, 47, 121 A. 236 (1923) (holding that litigation resolving an injury to two fingers did not bar later litigation for an injury to the thumb arising from the same occurrence); *Wacome v. Paul Mushero Constr. Co.*, 498 A.2d 593, 594 (Me. 1985) (holding that litigation establishing a foot injury did not preclude the employee from later claiming that he injured his back in the same incident); *see also Stovall v. New Eng. Tel. Co.*, Me. W.C.B. No. 21-35, ¶ 12 n.3 (App. Div. 2021) (remanding case for a determination of whether issues were actually litigated and therefore barred by res judicata).

[¶14] At issue here, therefore, is whether the extent of Lappin Brothers' lien amount and costs of collection of the third-party settlement, including reasonable attorney fees, was actually litigated in the proceedings that resulted in the 2019 board decision.

[¶15] The issues at the time of the 2019 decrees were whether the work-related exposure to asbestos caused Mr. Boyle's death, whether Lappin Brothers was liable for death and medical benefits under sections 215 and 206, and whether it had a lien against the third-party settlement proceeds under section 107. The existence of the lien and Lappin Brothers' liability for its proportionate share of collection costs were litigated and established. The amount of the lien and the amount of Lappin Brothers' share of the costs, however, were not litigated or established.³ Although the board requested evidence of the Estate's costs of collection during the 2019 litigation, that information was not provided until after the 2019 decrees had issued in the context of the current round of litigation. The amount of the lien was also not known in 2019 and could not have been determined until after the issue of liability

³ The amount of the lien would consist of the indemnity benefits and medical bills that the employer was relieved of paying, both in the past and future. *See McKeeman v. Cianbro Corp.*, 2002 ME 144, ¶ 17, 804 A.2d 406. The decree states that Lappin Brothers would have been required to pay death benefits and medical expenses to Ms. Boyle but for the lien against the settlement proceeds. Further complicating the issue of the lien is Lappin Brothers' entitlement for future benefits relieved. An employee's dependent is entitled to five hundred weeks of death benefits pursuant to 39-A M.R.S.A. § 215. Five hundred weeks from Mr. Boyle's date of death on June 27, 2010, is January 26, 2020, more than two months after the November 5, 2019, decree.

was determined.⁴ Accordingly, these specific issues are not barred. *See Pratt v. S.D. Warren Co.*, Me. W.C.B. No. 23-1, ¶ 35 (App. Div. 2023) (determining that a ruling in a prior decree that the employer was entitled to offset 50% of the employee's old age social security benefit was not binding on the issue whether the offset amount could include increases due to cost-of-living adjustments).

D. Adequate Findings

[¶16] After the current decree issued, the Estate requested additional findings regarding the amount of the lien and the amount of Lappin Brothers' share of the costs of collection of the settlement amount. When requested, an ALJ is under an affirmative duty under section 318 to make additional findings to create an adequate basis for appellate review. *See Coty v. Town of Millinocket*, 444 A.2d 355, 357 (Me. 1982); *Malpass v. Phillip J. Gibbons*, Me. W.C.B. No. 14-19, ¶ 18 (App. Div. 2014). Because the issues raised by the Petition are not barred due to lack of by jurisdiction or res judicata, and findings on those issues are necessary for adequate appellate review, we remand for additional findings regarding the amount of the lien and the amount of Lappin Brothers' share of collection costs related to the third-party settlement.

⁴ The lien amount had not been determined by the Employer/Insurer even at the current round of litigation.

III. CONCLUSION

[¶17] The ALJ erred in determining she did not have jurisdiction to determine the parties' rights under 39-A M.R.S.A. § 107 and to resolve a dispute regarding the 2019 decree. The 2019 decree established that Lappin Brothers has a lien pursuant to section 107 coextensive with its liability for death and medical benefit payments owed to the Estate and is responsible for its proportionate share of the Estate's costs of collection related to the third-party settlement. We remand for additional findings of fact and conclusions of law on the amount of the lien and Lappin Brothers' proportionate share of the Estate's costs of collection pursuant to section 107.

The entry is:

The administrative law judge's decision is vacated and remanded for additional findings of fact and conclusions of law consistent with this decision.

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.

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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