STATE OF MAINE
WORKERS' COMPENSATION BOARD

APPELLATE DIVISION
App. Div. Case No. 24-0006
Decision No. 25-18

ROBERT SOUCY
(Appellee)

v.

COUNTY OF PENOBSCOT
(Appellant)

and

MAINE MUNICIPAL ASSOCIATION
(Insurer)

Conferenced: December 11, 2024
Decided: October 28, 2025

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

[¶1] The County of Penobscot appeals from a decision of a Workers' Compensation Board Administrative Law Judge (*Hirtle, ALJ*) granting in part Robert Soucy's Petition for Award. The County appeals, contending the ALJ erred by (1) determining Mr. Soucy's earning capacity based on the State of Maine's 2023 minimum wage when the board inadvertently failed to issue the decision until after the State minimum wage had increased, and (2) failing to order repayment of lost wage benefits due to an alleged overpayment resulting from the delayed mailing. We agree with the first contention and modify the ALJ's decision in part to reflect an imputed earning capacity based on the 2024 State minimum wage.

I. BACKGROUND

[¶2] Robert Soucy is 80 years old. He began working as a corrections officer for the County in 2004. On January 27, 2016, he sustained a work-related injury to his left hip due to a violent confrontation with an inmate. He continued to work with restrictions until he underwent surgery on November 3, 2017. He remained out of work and subsequently underwent additional hip surgeries, culminating in a left hip replacement. The County paid lost wage benefits without prejudice.

[¶3] Eventually, a conflict arose regarding whether Mr. Soucy was capable of returning to work, and Mr. Soucy filed his Petition for Award. Hearings were held on March 27, 2023, and June 21, 2023. Mr. Soucy testified that he experiences pain every day, and has difficulty performing activities of daily living, including walking. Mr. Soucy's treating surgeon, Dr. Brooks, opined that he has no work capacity. Dr. Howard Jones, who examined Mr. Soucy for the County pursuant 39-A M.R.S.A § 207, opined that Mr. Soucy cannot perform his pre-injury job, but he has a full-time sedentary work capacity. Mr. Soucy underwent an independent medical examination with Dr. John Bradford, who also found that Mr. Soucy has a full-time sedentary work capacity. *See* 39-A M.R.S.A §312.

[¶4] Upon receiving Dr. Bradford's report, Mr. Soucy conducted a work search. The ALJ found the work search insufficient because it was not undertaken in good faith (Mr. Soucy testified that he was "just going through the motions" while conducting the work search); Mr. Soucy failed to target jobs he was capable of performing; and the search was too narrow because it was limited to work in commercial truck driving.

[¶5] Ms. Gina Temple conducted a labor market survey on behalf of the County. Ms. Temple opined that there are jobs available within Mr. Soucy's restrictions and that he has transferable skills that make those jobs suitable. In her opinion, Mr. Soucy could earn $931.20 per week. The ALJ did not find this persuasive because of Mr. Soucy's age, limited education, and lack of computer skills. The ALJ found that Mr. Soucy could work full-time and could earn the State of Maine's statutory minimum wage applicable in 2023, which was $13.80 per hour.

[¶6] The decree was written in 2023 and was noted to have been issued on September 18, 2023. However, apparently by mistake, the decree was not mailed to the parties at that time. After the County inquired, the parties were provided with a copy of the decision by email on January 25, 2024. The ALJ issued an amended decree that same day, changing the mail date to January 25, 2024, but not changing the substance of the original decree.

[¶7] The County filed a Motion for Findings of Fact and Conclusions of Law, raising two arguments. It contended first, that Mr. Soucy's imputed earnings should be based on the 2024 State minimum wage of $14.15 per hour, *see* 26 M.R.S.A. § 664(1), (not the 2023 wage) because the decision was issued in 2024; and second, that it was entitled to recoup an overpayment resulting from the delay in issuing the decision.[1]

[¶8] The ALJ granted the motion and issued an amended decree dated April 1, 2024, which addressed these issues but did not alter the outcome of the case. The ALJ specifically concluded that the document dated September 18, 2023, was not a decision of the board because it did not meet the requirements of 39-A M.R.S.A § 318.[2] The County appeals.

II. DISCUSSION

A. Standard of Review

[¶9] 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 further findings of fact and conclusions of law following a decision, the

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[1] The County raised these issues at the January 2024 conference, but the ALJ deferred a ruling, noting that the County could raise them in a Motion for Findings of Fact and Conclusions of Law pursuant to 39-A M.R.S.A § 318.

[2] Title 39-A M.R.S.A § 318 provides, in relevant part:

> The administrative law judge's decision must be filed in the office of the board and a copy, attested by the clerk of the board, mailed promptly to all parties interested or to the attorney of record of each party.

Appellate Division is to "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.

B. Imputed Earnings

[¶10] The County contends that due to the delay in mailing the decision, the ALJ should have based Mr. Soucy's post-injury earning capacity on the 2024 State minimum wage, not the lower 2023 State minimum wage. In support, the County cites multiple decisions of the board issued after formal hearing in which the ALJ imputed earning capacity based on the State minimum wage in effect at the time the decision was issued, including when issued in the year after the evidence was received.[3]

[¶11] The ALJ declined to alter his findings regarding imputed earning capacity. In support, he cited *Carver v. WalMart*, Me. W.C.B. No. 21-30 (App. Div. 2021). *Carver* involved an employer-filed petition for review. *Id.* ¶ 3. To allow for re-examination of the previously established payment scheme, the employer had the burden to establish a change in the employee's medical or economic circumstances since the prior decree was issued. *See Grubb v. S.D. Warren Co.*, 2003 ME 139, ¶ 7, 837 A.2d 117. The Appellate Division panel reasoned that determining an

[3] *Day v. General Contractor Vaughn D. Thibodeau*, W.C.B. No. 18010043 (Feb. 4, 2021); *Bridges v. Verso Paper*, W.C.B. No. 14028255 (Feb. 25, 2020); *Elliot v. Spurwink Servs., Inc.,* W.C.B. No. 16007180 (Feb. 11, 2020).

employee's earning capacity is a case-specific inquiry; thus, a statutory change in the minimum wage, by itself, does not "automatically constitute a change in an individual employee's economic circumstances [because it] assumes the availability of theoretical opportunities to earn without evidence of actual ones." *Carver*, Me. W.C.B. No. 21-30, ¶ 12.

[¶12] In this case, the ALJ was persuaded by the panel's reasoning in *Carver* and concluded that the increase in the State minimum wage effective January 1, 2024, alone did not increase Mr. Soucy's earning capacity between the time the decision was intended to be issued in 2023 and when it was mailed to the parties in 2024.

[¶13] *Carver,* however, involved an employer petition for review, while this case involves an employee petition for award. Thus, the ALJ here was tasked with making an initial assessment of Mr. Soucy's post-injury ability to earn, not with determining whether his circumstances had changed due to an increase in the State minimum wage. Moreover, the ALJ issued an amended decree changing the mail date to January 25, 2024; and the decision issued April 1, 2024, in response to the Motion for Findings of Fact and Conclusions of Law shows the "original decision date" as January 25, 2024.[4]

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[4] The ALJ noted in that decision:

> I find that the decision dated September 18, 2023, does not meet the statutory standard of section 318 to either order benefits or begin a period of potential recovery under section

[¶14] We cannot conclude that the 2023 State minimum wage provides a reasonable basis on which to impute earnings, when a higher wage was in effect at the time the decree was issued. Accordingly, we modify the decision to provide that Mr. Soucy has the ability earn the 2024 State minimum wage of $14.15 per hour.[5]

C. Recoupment of Alleged Overpayment

[¶15] The County next contends the ALJ erred when determining that it was not entitled to reimbursement for the alleged overpayment of incapacity benefits resulting from the delayed mailing. The County asserts that in the time between the original intended mailing date of the decree and the date the decree was mailed, the County continued paying total benefits unreduced by the retained earning capacity established in the decree, and it was error to deny its request to recoup the difference. We disagree.

[¶16] The ALJ relied on 39-A M.R.S.A § 324(1), which provides, in relevant part:

> If the board enters a decision awarding compensation, and a motion for findings of fact and conclusions of law is filed with the administrative law judge or an appeal is filed with the division pursuant to section 321-B or the Law Court pursuant to section 322, payments may not be suspended while the motion for findings of fact and conclusions of law

324. Specifically, section 318 of the Act requires that a[n] ALJ's decision (1) "be filed in the office of the board" and (2) "a copy, attested by the clerk of the board, mailed promptly to all parties interested or the the attorney of record of each party." 39-A M.R.S.A § 318. I find that where the decision of September 18, 2023, was not mailed to the attorneys of record, it was not a decision within the language of section 318.

[5] Title 39-A M.R.S.A § 321-B(3) authorizes the Appellate Division to "affirm, vacate, remand or modify a decree of an administrative law judge."

> or appeal is pending. The employer or insurer may recover from an employee payments made pending a motion for findings of fact and conclusions of law or appeal to the division or the Law Court if and to the extent that the administrative law judge, division or the Law Court has decided that the employee was not entitled to the compensation paid.

[¶17] Because the County was paying total benefits voluntarily and not pursuant to a decree, the ALJ determined that section 324 did not authorize recoupment of payments made to Mr. Soucy. The ALJ further reasoned that the County could have sought a reduction of benefit payments at any time pursuant to 39-A M.R.S.A § 205(9)(B)(1).

[¶18] The County contends that section 324(1) should apply in this case because if the September 18, 2023, decision had been mailed as initially intended, the County would have filed a motion for findings of fact and conclusions of law or an appeal at that time. Therefore section 324 should have been triggered when it received the decision. This contention lacks merit.

[¶19] As the Law Court has held, "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); *Jordan v. Sears, Roebuck & Co*., 651 A.2d 358, 362 (Me. 1994). The Law Court has consistently stated that "we are limited to the statutory remedies for repayment of benefits ultimately determined not to be properly paid." *Doucette v. Hallsmith/Sysco Food Servs.,* 2010 ME 138, ¶ 5, 10 A.3d 692; *see also Am. Mut. Ins. Cos. v. Murray*, 420 A.2d 251, 252 (Me. 1980) (holding the lack of a statutory provision for repayment of benefits after employer's successful appeal (at the time) is a question to be addressed by the Legislature). Where there is no express provision for recoupment, the Law Court has consistently rejected an employer's attempt to recoup past overpayments of workers' compensation benefits. *Cf. Urrutia v. Interstate Brands Int'l*, 2018 ME 24, ¶ 20, 179 A.3d 312 (allowing for a credit for benefits paid simultaneously with receipt of Social Security benefits pursuant 39-A M.R.S.A § 221, which expressly allows for an offset, and distinguishing cases in which no provision authorizes such a credit or recoupment). The Court further stated:

> For example, in *Pelotte* v. *Purolator Courier Corp*., 464 A.2d 186 (Me. 1983), the employer voluntarily made payments that turned out to be in a greater amount than the employee was entitled to receive. *Id.* at 187. We affirmed the court's refusal to allow the employer recovery for the past overpayments, observing that such a remedy was neither created in the statute addressing voluntary incapacity payments, *see* 39 M.R.S.A. § 51-A (Supp. 1982-1983), nor revealed in that statute's legislative history. *Id.* at 188. In *LaRochelle* v. *Crest Shoe Co*., 655 A.2d 1245 (Me. 1995), we concluded that the plain, express language of 39 M.R.S.A. § 104-A(1) (1989), which provided for an employer's recovery of overpayments that were "made pending appeal," did not allow the employer to recoup overpayments that were made before the appeal was filed. *Id.* at 1246-47; *see also Bureau* v. *Staffing Network, Inc*., 678 A.2d 583, 590 (Me. 1996) (stating that, absent statutory entitlement, reimbursement is not available for past overpayments).

Urrutia, 2018 ME 24, ¶ 20.

[¶20] The County further argues that it should be reimbursed because the delay in mailing constitutes an "error arising from oversight or omission" which the ALJ had authority to correct pursuant to 39-A M.R.S.A § 318.[6]

[¶21] Recoupment of payments made to an employee is specifically governed by section 324(1), while section 318 governs clerical errors, oversights, and omissions generally. It is a "fundamental rule of statutory construction" that "the application of a specific statutory provision [is favored] over the application of a more general provision when there is any inconsistency." *Cent. Me. Power v. Devereux Marine*, 2013 ME 37, ¶ 22, 68 A.3d 1262. The specific provision in section 324 provides the sole remedy for recoupment of payments erroneously made pursuant to a decree. Because that provision does not provide for recoupment of payments made due to an inadvertent delay in issuing that decree, the Act provides no remedy here.[7]

III. CONCLUSION

[¶22] The ALJ erred when imputing earning capacity based on a State minimum wage that was no longer in effect when the decree was issued. The ALJ

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[6] Title 39-A M.R.S.A § 318 provides, in relevant part:

> Clerical mistakes in decrees, orders or other parts of the record and errors arising from oversight or omission may be corrected by the board at any time of its own initiative, at the request of the administrative law judge or on the motion of any party and after notice to the parties.

[7] Moreover, despite the County's contention, the ALJ did not err when pointing out that the County could have sought a 21-day reduction or discontinuance at any time, pursuant to 39-A M.R.S.A § 205(9)(B)(1).

did not err when failing to order reimbursement of benefits paid as a result of an inadvertent delay in issuing the decree.

The entry is:

> The administrative law judge's decision is affirmed in part and modified in part to impute the employee's earning capacity based on the 2024 State of Maine minimum wage.

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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