STEVEN MICHAUD
(Appellant)

v.

CARIBOU FORD MERCURY, INC.
(Appellee)

and

MAINE AUTO DEALERS' ASSOCIATION
WORKERS' COMPENSATION TRUST
(Insurer)

Argued: July 12, 2023
Decided: July 31, 2023

PANEL MEMBERS: Administrative Law Judges Elwin, Chabot, and Knopf
BY: Administrative Law Judge Chabot

[¶1] Steven Michaud appeals from a decision of a Workers' Compensation Board administrative law judge (*Pelletier, ALJ*) granting his Petition for Specific Loss Benefits, but finding that interest on the payment ran from the date Mr. Michaud reached maximum medical improvement, instead of the date of injury. Mr. Michaud contends this was error because he sustained greater than 80% vision loss on the date of injury and never improved. *See* 39-A M.R.S.A. § 212(3)(M).[1] He also

[1] Title 39-A M.R.S.A. § 212(3)(M) provides:

> **Specific loss benefits**. In cases included in the following schedule, the incapacity is considered to continue for the period specified, and the compensation due is calculated based on the date of injury subject to the maximum benefit set in section 211. Compensation under this subsection is available only for the actual loss of the following:
> . . . .
> **M.** Eye, 162 weeks. Eighty percent loss of vision of one eye constitutes the total loss of that eye.

argues that the parties' mediation agreement compels a finding that the specific loss occurred on the date of the injury. We disagree and affirm the decision.

I. BACKGROUND

[¶2] Steven Michaud worked as an auto mechanic for Caribou Ford Mercury, Inc. (Caribou). He sustained work-related vision loss on December 26, 2014, when a piece of metal flew into his left eye. As a result of the injury, Mr. Michaud underwent five surgeries with the goal of improving his vision, the last occurring on August 12, 2019. Unfortunately, the surgeries were unsuccessful.

[¶3] Mr. Michaud filed Petitions for Award and for Specific Loss Benefits. On October 14, 2021, Dr. Mainen determined that Mr. Michaud had reached maximum medical improvement (MMI), having sustained a 94% vision loss in his left eye. Based upon Dr. Mainen's assessment, the parties entered into a mediation agreement on March 22, 2022, by which Caribou agreed to pay Mr. Michaud 162 weeks of specific loss benefits for the "total loss" of his left eye, *see* 39-A M.R.S.A. § 212(3)(M), with an offset for lost time benefits previously paid.[2] The only issue that remained for decision was the date the specific loss benefits became due, and thus, when interest began to accrue.

[2] Mr. Michaud received incapacity benefits intermittently from the date of injury through September 8, 2019.

[¶4] The ALJ granted Mr. Michaud's Petition, finding that the specific loss benefits were due as of the date of Dr. Mainen's assessment that Mr. Michaud had reached MMI, and that interest on the specific loss benefits accrued from that date.

[¶5] Mr. Michaud filed a Motion for Further Findings of Fact and Conclusions of Law, which the ALJ denied. Mr. Michaud appeals that decision.

II. DISCUSSION

A. Standard of Review

[¶6] On appeal, 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 Mr. Michaud 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.

A. Date Payment was Due

[¶7] "When weekly compensation is paid pursuant to an award, interest on the compensation must be paid at a rate of 10% per annum from the date each payment was due, until paid." 39-A M.R.S.A. § 205(6). "[T]he assessment of

pre-decree interest serves two purposes in the workers compensation context: (1) to compensate the employee for delay in the receipt of benefits; and (2) to discourage employers from contesting valid workers' compensation claims." *Guiggey v. Great N. Paper, Inc.*, 1997 ME 232, ¶ 7, 704 A.2d 375.

[¶8] Mr. Michaud contends he is entitled to interest on the specific loss benefits from the date of injury—not when he was determined to have reached MMI—because he lost more than 80% vision in his left eye on the date of injury and never improved. We disagree.

[¶9] The Law Court has held that the determination of total loss of an eye for purposes of specific loss benefits under 39-A M.R.S.A. § 212(3)(M) should be made when the work-related condition has reached a "reasonable medical endpoint." *Tracy v. Hersey Creamery Co.*, 1998 ME 247, ¶ 9, 720 A.2d 579. The Court reasoned that although the specific loss provisions do not contain the phrase "maximum medical improvement," they do "contain similar concepts expressed by the use of the terms 'total and permanent loss' and 'actual loss.'" *Id.* The Court determined in *Tracy* that while the employee initially suffered a 95% loss of vision on his date of injury, he was not entitled to specific loss benefits because his vision had been restored after correction to 60-70% vision loss, and thus, at the reasonable medical endpoint he did not suffer more than 80% loss of vision in one eye. *Id.* ¶ 12.

[¶10] Likewise, the Law Court has distinguished cases in which an employee suffered a finger injury that resulted in an amputation over a year later from cases in which the injury caused immediate amputation. *Compare Scott v. Fraser Papers, Inc., et al.*, 2013 ME 32, ¶ 7, 65 A.3d 1191 (holding that the employee's entitlement to specific loss benefits did not arise until his finger was surgically amputated a year after the injury occurred) *with Boehm v. Am. Falcon Corp.*, 1999 ME 16, ¶ 11, 726 A.2d 692 (noting that the employee's right to specific loss benefits arose at the time of immediate amputation of a finger, offset by the amount of incapacity benefits already paid).

[¶11] In this case, the ALJ specifically found that: Mr. Michaud underwent the last of five surgeries on August 12, 2019; Dr. Whiting had opined that he was not at MMI on January 8, 2020; and Dr. Mainen determined he had reached MMI on October 14, 2021. Based on these findings, the ALJ's ultimate finding that Mr. Michaud had arrived at a reasonable medical end point on October 14, 2021, is supported by competent evidence. Moreover, the conclusion that the specific loss benefits became due on that date, and thus interest ran from that date, involved no misconception of applicable law.

C. Mediation Agreement

[¶12] Mr. Michaud further asserts the parties' mediation agreement compels a finding that the specific loss occurred prior to the date of MMI because according

to its terms, Caribou received an offset for lost time benefits paid from the date of injury and before the date of MMI. Thus, he contends, Caribou effectively conceded that the specific loss occurred from the date of injury and that interest should accrue from that date.[3]

[¶13] This issue, however, was not presented to the ALJ at the hearing. Because this argument is raised for the first time on appeal, it has not been preserved for appellate review, and is waived. *Severy v. S.D. Warren Co.*, 402 A.2d 53, 56 (Me. 1979) ("Whether in the criminal or civil sphere, we have long adhered to the practice of declining to entertain arguments not presented to the original tribunal."); *Henderson v. Town of Winslow*, Me. W.C.B. No. 17-46, ¶ 10 (App. Div. 2017) (explaining the importance of raising a legal argument at a time and manner sufficient to give the ALJ and opposing party a fair opportunity to respond and address it).

III. CONCLUSION

[¶14] The ALJ's decision involved no misconception of applicable law, is supported by competent evidence, 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.

[3] Although the Law Court has held that an offset for lost time benefits cannot be taken before the date of the specific loss, *Scott*, 2013 ME 32, ¶ 13, we do not read the mediation agreement as compelling a finding that the specific loss occurred as of the date of injury.

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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