

JEROME WEISS
(Appellant)

v.

MAINE SOAPSTONE COMPANY, INC.
(Appellee)

and

MAINE EMPLOYERS' MUTUAL INSURANCE COMPANY
(Insurer)

Decided: October 8, 2026
Conference held: September 2, 2026

PANEL MEMBERS: Administrative Law Judges Biddings, Chabot, and Rooks
By: Administrative Law Judge Biddings

[¶1] Jerome Weiss appeals from a decision of a Workers' Compensation Board administrative law judge (*Smith, ALJ*) denying his Petition to Reopen for Mistake of Fact or Fraud. Mr. Weiss contends that the ALJ erred in determining that his petition was untimely under 39-A M.R.S.A. § 321(2), and in concluding that even if the petition had been timely, Mr. Weiss did not establish that Maine Soapstone Company committed fraud. We disagree with Mr. Weiss's contentions and affirm the decision.

I. BACKGROUND¹

[¶2] Mr. Weiss sustained a work-related shoulder injury on February 3, 2009, while working for Maine Soapstone Company. Initially, Maine Soapstone voluntarily paid Mr. Weiss lost time and medical benefits. On September 13, 2010, Maine Soapstone issued a 21-day letter informing Mr. Weiss and the board of their intention to discontinue Mr. Weiss's benefits as of October 5, 2010. *See* 39-A M.R.S.A. § 205(9).

[¶3] In response to the discontinuance of his benefits, Mr. Weiss filed a Petition for Review, Request for Provisional Order, and a Petition for Award of Compensation regarding the February 3, 2009, date of injury. During the litigation, Mr. Weiss underwent an independent medical examination with Dr. Hall. *See* 39-A M.R.S.A. § 312. Dr. Hall opined that the effects of Mr. Weiss's injury were ongoing and that he had retained a partial work capacity. An evidentiary hearing was held on May 16, 2011, before a board hearing officer (*Pelletier, HO*).²

¹ Mr. Weiss represented himself throughout this appeal. Mr. Weiss was authorized to forego filing the record on appeal pursuant to Me. W.C.B. Rule, ch. 13, § 4(1-A). We draw the background below from the contents of the appendix, the transcript of the hearing and exhibits, the contents of the board's file, and from instances where the parties are in agreement about facts.

² Pursuant to P.L. 2015, ch. 297 (effective October 15, 2015) Workers' Compensation Board hearing officers licensed to practice law are now designated administrative law judges. The earlier litigation occurred before the change in the law.

[¶4] On April 27, 2012, the hearing officer issued a decision addressing the Petitions for Review and for Award.³ In the decree, the hearing officer accepted the opinion of Dr. Hall, the independent medical examiner, that Mr. Weiss continued to experience the effects of the work injury but had retained a partial earning capacity. The hearing officer further concluded that Mr. Weiss had failed to show, with evidence of a work search, that work was unavailable to him due to the work injury. Thus, the hearing officer granted the Petition for Award and awarded Mr. Weiss 55% partial incapacity benefits from October 5, 2010, forward. The Petition for Review was dismissed.

[¶5] On March 7, 2024, Mr. Weiss filed a Petition to Reopen for Mistake of Fact or Fraud under section 321(2), seeking to revisit the 2012 decree. A hearing on the petition was held on May 27, 2025. At that hearing, Mr. Weiss asserted that Maine Soapstone presented false information in the 21-day letter and that the hearing officer had “made a judgment favorable to the fraudulent party.” Specifically, Mr. Weiss alleged that Maine Soapstone had fraudulently stated that Dr. Kimball, who performed an examination in the case pursuant to 39-A M.R.S.A § 207, and Dr. Rice, Mr. Weiss’s treating provider, agreed that his ongoing symptoms were not caused by the work injury. Maine Soapstone denied any fraud and noted that in any event the

³ Mr. Weiss’s request for a provisional order was denied by the hearing officer on December 14, 2010.

hearing officer in 2012 had relied on the opinion of the independent medical examiner in awarding partial incapacity benefits.

[¶6] The ALJ issued a decision on October 28, 2025, denying the Petition to Reopen as untimely under section 321(2). The ALJ interpreted the statutory language to require a petitioner to file a petition to reopen within one year of the initiation of the payment scheme, award, or decree.⁴

[¶7] On January 22, 2026, Mr. Weiss filed a Motion for Additional Findings of Fact and Conclusions of Law. On March 30, 2026, the ALJ issued an amended decree in response to that motion. The ALJ did not alter the conclusion that Mr. Weiss's petition was time-barred under section 321(2). However, she made additional findings addressing Mr. Weiss's contention that Maine Soapstone had committed fraud.⁵ The ALJ found that Mr. Weiss had proven that a mistake was made,⁶ that the mistake was brought to the attention of the hearing officer, and that

⁴ The ALJ mistakenly identified the April 27, 2012, decision date as October 5, 2010, which was the date that Mr. Weiss's benefits were discontinued pursuant to the 21-day letter. This error appeared in both the October 28, 2025, decree and the subsequent March 30, 2026, amended decree. This factual mistake does not constitute reversible error. The ALJ found that the Petition to Reopen was filed on March 7, 2024. This finding is supported by competent evidence in the record. Thus, the finding that the petition was filed more than one year after the initiation of the payment scheme (which in fact began April 27, 2012) is also supported by competent evidence in the record, and any error in the dates is harmless.

⁵ Mr. Weiss also raised an issue regarding the calculation of his benefits but indicated in his appellate brief that he was retracting that claim. Therefore, we do not address that argument herein.

⁶ The ALJ noted that Maine Soapstone's statement in the 21-day letter was inaccurate, however, she mistakenly identified the doctors involved as Dr. Kimball and Dr. Hall rather than Dr. Kimball and Dr. Rice. The 21-day letter was filed prior to Dr. Hall's section 312 examination in the case.

the hearing officer had considered all the evidence and “made a decision the Employee felt was unfavorable.” The ALJ thus concluded that the evidence presented by Mr. Weiss did not support a finding of fraud. Mr. Weiss appeals.⁷

II. DISCUSSION

A. Standard of Review

[¶8] In general, 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. Weiss requested findings of fact and conclusions of law following the decision, the Appellate Division “review[s] 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. Timeliness of the Petition

[¶9] Mr. Weiss’s Petition to Reopen was filed pursuant to 39-A M.R.S.A. § 321(2). That provision states:

A party may petition the board, within one year of initiation of a payment scheme, award or decree, to reopen any case in which fraud

⁷ Mr. Weiss filed a Notice of Intent to Appeal on January 14, 2026, while the Motion for Findings of Fact and Conclusions of Law was still pending. The appeal was stayed pending the issuance of the amended decree. See Me. W.C.B. Rule, ch. 13, § 3(1)(C).

on the part of the opposing party is alleged. If the board finds that the petitioning party exercised due diligence in investigating the initial claim and further finds that fraud occurred, the board may reopen the case as to any issue that may have been affected by the fraudulent act and the board may terminate or modify an employer's obligation to make payment upon a finding that fraud on the part of a party affected the employer's obligation to make payment.

Except in the case of fraud on the part of the employee, an employee is not barred by any time limit from filing a petition to have any issues determined in accordance with this Act as though the payment scheme had not been initiated.

[¶10] Mr. Weiss argues that the second paragraph of this section allows an employee who has not committed fraud to file a petition to reopen at any time. We disagree.

[¶11] “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.*

[¶12] The first sentence of section 321(2) provides that a petition to reopen alleging fraud by the opposing party may be filed “within one year of initiation of a payment scheme, award or decree.” We find no ambiguity in this language. The Legislature limited the period for filing a petition for reopening under section 321(2) to one year from the initiation of a payment scheme, award, or decree.

[¶13] Mr. Weiss argues that the second paragraph of section 321(2) removes the one-year time limit in cases where the employee has not committed fraud. Construing the statutory language in this way would render the first sentence of section 321(2) superfluous with respect to any employee who has not committed fraud. The Law Court has stated “[n]othing in a statute may be treated as surplusage if a reasonable construction supplying meaning and force is otherwise possible.” *Labbe v. Nissen Corp.*, 404 A.2d 564, 567 (1979). The second paragraph of section 321(2) refers not to the filing of a petition to reopen but to the filing of “a petition to have any issues determined in accordance with this Act as though the payment scheme had not been initiated.” This language allows an eligible employee to file new petitions, which might otherwise have been time-barred, in a matter that has been reopened pursuant to the first paragraph of section 321(2). We adopt this construction, which supplies meaning and force to both paragraphs of section 321(2), and rely on it to find that the ALJ did not err in determining that Mr. Weiss’s Petition to Reopen was untimely.

C. Fraud

[¶14] Mr. Weiss argues that the ALJ erred in finding that even if the Petition to Reopen had been timely, the evidence did not support a finding of fraud. This argument lacks merit.

[¶15] The board has defined the elements of fraud as:

(1) a material representation which is (2) false and (3) known to be false, or made recklessly as an assertion of fact without knowledge of its truth or falsity and (4) made with the intention that it shall be acted upon and (5) acted upon with damage.

Watson v. Ne. Maintenance Specialist, Me. W.C.B. No. 85-132, at 1046 (App. Div. 1985) (citing *Letellier v. Small*, 400 A.2d. 371, 373 (Me. 1979)). Additionally, the Law Court has stated that justifiable reliance on a false representation is an essential element of a fraud claim. *See generally Wildes v. Ocean Nat. Bank of Kennebunk*, 498 A.2d 601, 602 (Me. 1985).

[¶16] The hearing officer in the 2012 litigation did not adopt the opinions of Dr. Kimball or Dr. Rice, nor did he credit Maine Soapstone's characterization of those opinions in determining the cause of Mr. Weiss's ongoing symptoms or his level of incapacity. Instead, the hearing officer adopted the opinion of Dr. Hall, the independent medical examiner, in determining Mr. Weiss's entitlement to benefits. *See* 39-A M.R.S.A. § 312(7).⁸

[¶17] Further, the record shows that Mr. Weiss did not rely upon the alleged fraudulent statements. Instead, he challenged them by filing his Petitions for Review, for a Provisional Order, and for Award.

⁸ Title 39-A M.R.S.A. § 312(7) provides: "The board shall adopt the medical findings of the independent medical examiner unless there is clear and convincing evidence to the contrary in the record that does not support the medical findings."

[¶18] We therefore conclude that the ALJ did not err when determining that that the record does not support a finding of fraud in this case because the hearing officer did not act upon the purportedly fraudulent statement and instead acted upon the opinion of the section 312 examiner; and because Mr. Weiss did not rely on the alleged fraudulent statements.

III. CONCLUSION

[¶19] The ALJ neither misconceived nor misapplied the law when determining that that Mr. Weiss's Petition to Reopen was time-barred. Her interpretation of 39-A M.R.S.A. § 321(2) is consistent with the plain language of the statute. Furthermore, the record before the ALJ contained competent evidence to support the finding that there was no fraud committed in this case.

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.

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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