

LAWRENCE BERUBE  
(Appellee)

v.

TWIN RIVERS PAPER COMPANY, LLC  
(Appellant)

and

SEDGWICK CLAIMS MANAGEMENT SERVICES, INC.  
(Appellant)

Argued: June 12, 2019  
Decided: January 15, 2021

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

[¶1] Twin Rivers appeals from a decision of a Workers' Compensation Board administrative law judge (*Hirtle, ALJ*) denying its Petition for Review of Decision of the Supplemental Benefits Fund, pursuant to 39-A M.R.S.A. § 355-C(3) (Pamph. 2020). We affirm the decision.

## I. BACKGROUND

[¶2] Lawrence Berube injured his back on September 15, 1993, while working for Fraser Paper Company, predecessor to Twin Rivers Paper Company. After Mr. Berube's employment was terminated in 1996, Fraser paid him total incapacity benefits.

[¶3] The board approved a consent decree on December 7, 1998, finding that Mr. Berube had experienced 14% permanent impairment due to the 1993 work injury, and 10% permanent impairment due to an earlier work-related low back injury. The consent decree ordered that “... reimbursement to [Fraser] for the payment of all benefits payable in excess of 260 weeks of compensation under 39-A M.R.S.A. §213(3), must be paid from the Employment Rehabilitation Fund....” This payment source, known as the Supplemental Benefits Fund (SBF), *see* 39-A M.R.S.A. § 355-A (Pamph. 2020), was not a party to the consent decree and was not given prior notice of the petition that resulted in the finding of 14% whole person permanent impairment.

[¶4] The board issued a decision on September 15, 2006, granting Fraser’s petition for review, finding that Mr. Berube had retained partial work capacity and reducing his benefits based on an imputed earning capacity of \$320.00 per week.

[¶5] By letter dated November 13, 2006, Fraser’s claims management administrator, Sedgwick CMS, asked SBF for reimbursement of benefits paid to Mr. Berube, pursuant to 39-A M.R.S.A. § 213(3) (Supp. 2020). SBF made annual reimbursement payments to Fraser/Twin Rivers through August 22, 2014. In 2015, SBF refused to provide further reimbursements.

[¶6] By letter dated July 26, 2017, SBF notified Twin Rivers that it would not provide reimbursement for Mr. Berube’s benefits because: (1) Twin Rivers had

not provided information about Mr. Berube's pension; (2) Twin Rivers had not adjusted the claim "in a manner that is consistent with usual and customary claims service" when it failed to (i) take an offset for Mr. Berube's pension benefits, and (ii) include permanent impairment from an earlier injury that would have placed Mr. Berube's level of impairment above that implicating the SBF; and (3) Twin Rivers entered into a consent decree on December 7, 1998, establishing permanent impairment without providing notice to SBF.

[¶7] Twin Rivers filed a Petition for Review of SBF's denial of reimbursement, pursuant to 39-A M.R.S.A. § 355-C(3). This section provides that SBF's Oversight Committee shall review requests for reimbursement within 14 days, and "... shall issue a final determination, designated as such" to each insurer requesting reimbursement. The insurer may petition the board for a hearing before an ALJ within 30 days of notice of the determination. Review by the board "is limited to errors of law and abuse of discretion." *Id.*

[¶8] The ALJ determined that SBF's denial of reimbursement was not an error of law or abuse of discretion because, having received no prior notice, SBF was not bound by the consent decree that established Mr. Berube's permanent impairment rating.<sup>1</sup>

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<sup>1</sup> Having determined that SBF had no obligation to reimburse Twin Rivers, the ALJ concluded that "... the remaining arguments raised by the Employer are moot." These arguments challenging SBF's denial of reimbursement due to Twin Rivers' (1) failure to take a pension offset, or (2) failure to appropriately adjust the claim by not "stacking" permanent impairment from an earlier injury, were addressed by the

[¶9] Twin Rivers filed a Motion for Findings of Fact and Conclusions of Law, which the ALJ denied. This appeal followed.

## II. DISCUSSION

[¶10] The Appellate Division’s role on appeal “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 and proposes additional findings of fact and conclusions of law, “we review only the factual findings actually made and the legal standards actually applied” by the ALJ. *Daley v. Spinnaker Indus.*, 2002 ME 134, ¶ 17, 803 A.2d 446 (quotation marks omitted).

[¶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.* We also consider “the whole statutory scheme of which

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ALJ in the alternative to facilitate appellate review, if necessary. Because we agree with the ALJ’s conclusion that SBF committed no error of law or abuse of discretion in declining to reimburse Twin Rivers on the basis that it was not bound by the terms of the consent decree, we need not address the alternative grounds the ALJ deemed moot.

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). “If the statutory language is ambiguous, we then look beyond the plain meaning and consider other indicia of legislative intent, including legislative history.” *Damon v. S.D. Warren Co.*, 2010 ME 24, ¶ 10, 990 A.2d 1028.

[¶12] The ALJ correctly noted that, pursuant to 39-A M.R.S.A. § 355-C(3), review by the board “is limited to errors of law and abuse of discretion.”

[¶13] At the hearing, Twin Rivers attempted to meet its burden of establishing an error of law or abuse of discretion by claiming that SBF lost any opportunity to dispute its liability when it did not timely appeal the December 7, 1998, consent decree establishing 14% permanent impairment (thereby triggering SBF’s reimbursement obligation). The ALJ rejected this argument based on the plain language of section 355-C(5), which provides in pertinent part as follows:

The fund is bound as to any question of law or fact by reason of a ... consent decree, provided the committee was given notice of the terms of the agreement or decree at least 21 days before the effective date of the agreement and did not object. The fund is not bound by the agreement or decree if the committee provides a written objection to the proposed terms of the agreement or decree to the insurer or self-insurer.

We agree with the ALJ's determination that it was neither error of law nor abuse of discretion for SBF to refuse reimbursement on the basis that it did not receive proper notice of the consent decree, and therefore was not bound by it.

[¶14] Twin Rivers further argues that SBF's continued reimbursements from 2007 through 2014 constituted "final determinations" of eligibility for reimbursement for purposes of 39-A M.R.S.A. § 355-C(3), which precluded SBF from refusing reimbursement in 2017. The ALJ rejected this argument based on section 355-C(3)'s plain language, as well as the overarching statutory scheme. Section 355-C(3) mandates that SBF's "final determination" be "designated as such." The ALJ found no evidence that any prior reimbursements were designated as "final determinations."

[¶15] Furthermore, the statute requires SBF to continually verify that the insurer "has adjusted and is adjusting the claim in a manner that is consistent with usual and customary claims service...." 39-A M.R.S.A. § 355-C(2)(E). The ALJ determined that this requirement "would be nonsensical if the SBF was to be bound by its past willingness to pay a claim." We agree with the ALJ's determination that SBF's refusal to reimburse Twin Rivers, despite making prior reimbursements, constituted no error of law or abuse of discretion.

The entry is:

The administrative law judge's decision is affirmed.

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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 (Pamph. 2020).

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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