SHERRY KNOX
(Appellant)

v.

IRVING FOREST PRODUCTS, INC.
(Appellee)

and

LIBERTY MUTUAL INSURANCE COMPANY
(Insurer)

Argument held: February 11, 2021
Decided: June 29, 2022

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

[¶1] Sherry Knox appeals from a decision of a Workers' Compensation Board administrative law judge (*Chabot, ALJ*) denying her Petitions for Award and for Payment of Medical and Related Services regarding an alleged injury date of July 22, 2015. Ms. Knox argues that the ALJ committed reversible legal error by (1) refusing her request to give additional testimony on remand from the Appellate Division; and (2) relying on Ms. Knox's testimony to find her notice obligation began on February 21, 2015, when a prior decision in the case rejected Ms. Knox's testimony as proof that she provided notice on or about that date. We disagree and affirm the decision.

## I. BACKGROUND

[¶2] After a testimonial hearing, an ALJ (*Goodnough, ALJ*) issued a decision dated June 1, 2017. In that decision, the ALJ found that Sherry Knox experienced a gradual, work-related right hip injury in 2015 while working as a lumber handler for Irving Forest Products. The ALJ specifically rejected Ms. Knox's testimony that she told her supervisor in February of 2015 that the work activity was causing her right hip to pop out. Instead, the ALJ found the contrary testimony of her tech trainer[1] to be more persuasive and adopted it. Further, the ALJ established the date of injury as July 22, 2015, and found that Ms. Knox gave timely notice to Irving on the same date. The ALJ then awarded retroactive and ongoing partial incapacity benefits reduced by an imputed earning capacity pursuant to 39-A M.R.S.A. § 213.

[¶3] Irving appealed the 2017 decision to the board's Appellate Division pursuant to 39-A M.R.S.A. § 321-B and argued that the ALJ had used an incorrect legal standard to set the date of Ms. Knox's gradual injury. The Appellate Division agreed and issued a decision on November 22, 2019, vacating the decision in part and remanding the case to the ALJ to determine the date of Ms. Knox's gradual injury by applying the correct legal standard, established by the Law Court in *Jensen v. S.D. Warren*, 2009 ME 35, ¶ 14, 968 A.2d 528. The Appellate panel stated:

[1] The tech trainer testified that Ms. Knox described right hip symptoms but did not state the symptoms were brought on by work activities.

> We therefore vacate the ALJ's decision and remand for reconsideration of the date of injury. Pursuant to *Jensen*, the ALJ should first determine the date of injury, i.e., the date on which the injury manifested itself, and then examine whether the statutory notice period commenced on that date or whether it commenced at a later date based on a mistake of fact.

*Knox v. Irving Forest Products, Inc.*, Me. W.C.B. No. 19-39, ¶ 16 (App. Div. 2019). In the underlying litigation, neither party had asserted that Ms. Knox's obligation to give notice of her injury may have been tolled by a mistake of fact pursuant to 39-A M.R.S.A. § 302.

[¶4] On remand, Ms. Knox requested further hearing time to present testimony on the issue of mistake of fact; a request to which Irving objected. The ALJ (*Chabot, ALJ*) denied the request for further testimony and adjudicated the case on the evidence initially presented.[2] Applying the *Jensen* standard, and based on Ms. Knox's testimony that on February 21, 2015, she was experiencing severe right hip symptoms brought on by performing work activities, the ALJ found that the date of Ms. Knox's gradual injury was February 21, 2015. Further, the ALJ relied on Ms. Knox's testimony that she gave notice of her injury in February of 2015 to find that she knew her condition was work-related at that time and therefore the 30-day notice period began to run on that date. *See* 39-A M.R.S.A. § 301. Because the underlying

[2] ALJ Goodnough had retired while the appeal was pending.

decision found that Ms. Knox gave notice on July 22, 2015, the ALJ determined that the claim was barred by section 301 and denied it. This appeal followed.

[¶5] Ms. Knox filed a Motion for Additional Findings of Fact and Conclusions of Law, in response to which the ALJ made no substantive changes to his conclusions. This appeal followed.

## II. DISCUSSION

### A. Standard of Review

[¶6] 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 Ms. Knox 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.

### B. Proceedings on Remand

[¶7] Ms. Knox argues that after the Appellate Division raised the issue of a mistake of fact the ALJ was obligated to allow her to present testimony and develop a record regarding the issue. Irving argues that Ms. Knox had every opportunity to

present a mistake of fact argument during the initial litigation and the ALJ therefore committed no reversible error by refusing her request for further testimony after the decision of the Appellate Division.

[¶8] We find no reversible error in the ALJ's determination to accept no further testimony on remand. In its decision, the prior panel of the Appellate Division gave a full recitation of the Law Court's *Jensen* standard which includes mention of a mistake of fact. Such a recitation of applicable case law did not obligate the ALJ on remand to permit testimony on a novel issue, previously unraised by the parties. The case was fully litigated regarding a notice dispute leading up to the 2017 decision and no mistake of fact argument was presented. Thus, we find no error in the ALJ's procedural determination on remand. *See In re Jonas*, 2019 ME 25, ¶¶ 3-7, 202 A.3d 1187 (upholding the denial of a request to submit additional evidence on remand as consistent with appellate mandate).

C. Reliance on Testimony from Ms. Knox

[¶9] Ms. Knox argues that the ALJ committed reversible legal error when he relied upon Ms. Knox's testimony to establish the required knowledge that triggered her notice obligation in February of 2015, when the ALJ in the 2017 decision found that the same testimony from Ms. Knox was not credible and did not prove that she gave notice of her injury to Irving on that date. Conversely, Irving argues that the ALJ did not err because testimony may be adopted for one purpose (here showing

Ms. Knox's state of mind) and rejected for another purpose (giving legal notice of a work injury to an employer).

[¶10] We agree with Irving. While the ALJ who heard the testimony in 2017 did not adopt Ms. Knox's testimony to find that she provided notice of a work injury to her supervisor in February of 2015, the ALJ on remand was within his discretion as a fact finder to rely on Ms. Knox's testimony for a different purpose: finding that she knew of a connection between her symptoms and work in February of 2015 and to then find that her notice obligation began at that time. *See, e.g.*, M.R. Evid. 105 (discussing admission of evidence for one purpose but not another); *Estate of Sullwold v. The Salvation Army*, Me. W.C.B. No. 13-13, ¶¶ 20-21 (App. Div. 2013) (permitting use of the Rules of Evidence as guidance before the board).

## III. CONCLUSION

[¶11] The ALJ did not commit reversible legal error when he denied the request for further testimony on remand regarding an issue not previously raised in litigation and mentioned only in the Appellate Division's recitation of the applicable legal standard for setting the date of injury in a gradual injury case. Further, the ALJ did not commit reversible legal error when he relied on Ms. Knox's testimony to reach a finding about her state of mind when that same testimony was previously rejected as unpersuasive to establish legal notice to Irving of the injury.

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.

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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