

FAYE BOYLE and ESTATE OF J. MICHAEL BOYLE, SR.
(Appellants)

v.

LAPPIN BROTHERS, INC.
(Appellee)

and

ACE INSURANCE CO.
(Insurer)

Argued: July 9, 2025
Decided: October 10, 2025

Panel Members: Administrative Law Judges Sands, Chabot, and Rooks
By: Administrative Law Judge Sands

[¶1] Faye Boyle and the Estate of J. Michael Boyle, Sr., (the Estate) appeal a decision (issued after a remand from the Appellate Division) of a Workers' Compensation Board administrative law judge (*Elwin, ALJ*) denying the Estate's Petition for Order of Payment. The Estate sought a ruling as to Lappin Brothers' proportional share of the Estate's cost of collection related to a third-party settlement. *See* 39-A M.R.S.A. § 107. The Estate contends that the ALJ erred in placing the burden of proof on the Estate and concluding that the Estate did not meet that burden with sufficient evidence to reach a determination as to Lappin Brothers' proportionate share of the cost of collection. We disagree and affirm the decision.

I. BACKGROUND

[¶2] The facts and procedural history of this case are substantially set forth in prior Appellate Division decisions and we will not repeat them here. *See Estate of Boyle v. Lappin Bros.*, Me. W.C.B. No. 17-8, 17-9 (App. Div. 2017) (“*Boyle I*”); *Estate of Boyle v. Lappin Bros.*, Me. W.C.B. No. 22-14 (App. Div. 2022) (“*Boyle II*”); and *Estate of Boyle v. Lappin Bros.*, Me. W.C.B. No. 23-18 (App. Div. 2023) (“*Boyle III*”). Most recently, the *Boyle III* panel addressed the Estate’s request for Lappin Brothers to be ordered to pay its proportionate share of the cost of collection of a third-party settlement pursuant to 39-A M.R.S.A. §107.¹ The ALJ had denied this request based on the absence of authority for an ALJ to enter an order enforcing a board decree. The appellate panel agreed but held that the ALJ did have the authority to resolve disputes as to the amount of any section 107 lien and Lappin

¹ Title 39-A M.R.S.A § 107 reads, in pertinent part:

When an injury or death for which compensation or medical benefits are payable under this Act is sustained under circumstances creating in some person other than the employer a legal liability to pay damages, the injured employee may, at the employee’s option, either claim the compensation and benefits or obtain damages from or proceed at law against that other person to recover damages.

If the injured employee elects to claim compensation and benefits under this Act, any employer having paid the compensation or benefits or having become liable for compensation or benefits under any compensation payment scheme has a lien for the value of compensation paid on any damages subsequently recovered against the 3rd person liable for the injury....

If the employee or the employee’s beneficiary recovers damages from a 3rd person, the employee shall repay to the employer, out of the recovery against the 3rd person, the benefits paid by the employer under this Act, less the employer’s proportionate share of cost of collection, including reasonable attorney’s fees.

Brothers' proportionate share of the cost of collection. Accordingly, the matter was remanded for "additional findings of fact and conclusions of law on the amount of the lien and Lappin Brothers' proportionate share of the Estate's costs of collection pursuant to section 107." *Boyle III*, ¶ 17.

[¶3] Following the remand, the ALJ held a conference of counsel on November 29, 2023. At this conference, the parties agreed to submit proposed findings regarding the Estate's proportionate share of the cost of collection. No request was made to reopen the record to allow for submission of additional exhibits.

[¶4] After submission of the proposed findings, the ALJ issued a Decision on Remand and a subsequent Corrected Decision on Remand (April 11, 2024, and April 26, 2024, respectively). These decisions contained findings as to the costs Lappin Brothers was relieved of paying by virtue of its lien under 39-A M.R.S.A. § 107, with respect to both death benefits and compensable medical expenses.² However, the ALJ held that she was unable to determine Lappin Brothers' proportionate share of the Estate's cost of collection, including attorney fees, because the Estate had failed to meet its burden of proof on that issue.

² Specifically, the ALJ held that the lien relieved Lappin Brothers' of paying the Estate death benefits in the amount of \$310,548.13 and medical expenses in the amount of \$529,365.81, prior to application of the Board's fee schedule.

[¶5] The ALJ pointed to the definition of “proportionate share” and the procedure for calculating that share set forth by the Law Court in *McKeeman v. Cianbro Corp.*, 2002 ME 144, 804 A.2d 406. She quoted *McKeeman*:

“Proportion” means “the relation of one part to another or to the whole with respect to magnitude, quantity, or degree.” Webster’s Seventh New Collegiate Dictionary 683 (7th Ed. 1970). Proportion thus refers to a ratio, here the ratio of the employer’s benefit to the total settlement received by [Ms. McKeeman]. S.D. Warren’s proportionate share should therefore be calculated by comparing S.D. Warren’s full benefit from the settlement, which is yet to be determined by the Superior Court, with the total value of the settlement, \$970,000.

Id. ¶ 18. She then indicated that the record did not contain sufficient information to calculate that share, stating:

In this case, the Estate refused to provide information regarding the total value of the third-party settlement it received—this amount is needed to determine the ratio between Lappin Brothers’ benefit from the settlement (namely, the avoided death benefits and fee-schedule-adjusted medical expenses described above) and the total value of the settlement.

[¶6] Specifically, the contingency fee agreement associated with the third-party litigation referenced a fee of “1/3 of the total recovery” that would apply only in the absence of any “court order or administrative claim processing in which attorneys fees are otherwise governed.” The contingency fee agreement also indicated that the Estate would be provided with a disbursement sheet reflecting attorney fees and expenses of litigation. The Estate did not provide the disbursement

sheet or other evidence of “what fees were ordered, approved, or actually paid.” The ALJ thus concluded:

Because the Estate failed to submit evidence regarding the total value of the third-party settlement, or the amount paid in attorneys’ fees and costs for the third-party action, the Board lacks sufficient information to make a finding regarding Lappin Brothers’ “proportionate share of the costs of collection.”

As such, the Petition for Order of Payment was denied.

[¶7] The Estate filed a Motion for Further Findings of Fact and Conclusions of Law pursuant to 39-A M.R.S.A. § 318. The ALJ issued further findings on November 25, 2024, which did not alter the outcome of the Decision on Remand. This appeal followed.

II. DISCUSSION

A. Standard of Review

[¶8] 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 the Estate 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.

[¶9] Here, the ALJ concluded that the Estate did not meet its burden of proof in establishing Lappin Brothers’ proportionate share of the Estate’s cost of collection related to the third-party settlement. When “the administrative law judge expressly finds that any party has or has not sustained the party’s burden of proof, that finding is considered a conclusion of law.” 39-A M.R.S.A § 318. “When an [ALJ] concludes that the party with the burden of proof failed to meet that burden, we will reverse that determination only if the record compels a contrary conclusion to the exclusion of any other inference.” *Kelley v. Me. Pub. Employees Ret. Sys.*, 2009 ME 27, ¶ 16, 967 A.2d 676 (quotation marks omitted).

B. Existence of the Lien

[¶10] As a starting point, the Estate argues that the board erred in concluding that Lappin Brothers has a lien under section 107 because, to date, it has made no payments of either death benefits or medical expenses. The ALJ first found that a section 107 lien exists, eliminating obligation of payment, in a decree issued on November 5, 2019. This decision was appealed and affirmed by the Appellate Division in *Boyle II*. Me. W.C.B. No. 22-14, ¶ 12. Furthermore, the *Boyle III* panel recognized that the 2019 decree established the existence of the lien and remanded the case for determination as to the amount of the lien and the cost of collection only.

Me. W.C.B. No. 23-18, ¶ 11. Accordingly, we hold that the Estate’s present argument that no lien exists is governed by the “law of the case” and we decline to revisit this argument herein. *See Hamilton v. Me. Dept. of Health and Human Servs.*, Me. W.C.B. No. 23-07, ¶¶ 7-9 (App. Div. 2023).

C. Burden of Proof

[¶11] The Estate next argues that because Lappin Brothers is seeking the protection of the lien statute, they bear the burden of proof as to the amount of the section 107 lien and their proportionate share of the cost of collection. We disagree.

[¶12] Although the Law Court has held that an employer has the burden of establishing value of the indemnity benefits and medical bills either paid or avoided by virtue of a third-party recovery, *Constr. Servs. Workers’ Comp. Group Self Ins. Trust v. Stevens*, 2010 ME 108, ¶ 17, 8 A.3d 688, we are unaware of any case that places the burden of establishing proportionate cost of collection on the employer. The information necessary to determine an employer’s proportionate costs of collection is exclusively in the hands of the employee. It would be both impractical and unreasonable to assign the burden to the employer. Accordingly, we find no error in the ALJ’s holding that the Estate, as both the moving party and the party with control and access to evidence of attorney fees and costs associated with the third-party recovery, bears the burden of proof. *See Nichols v. Cantara & Sons*, 659 A.2d 258, 262-63 (Me. 1995) (placing the burden of proof on the employee to establish

the extent of consortium claim inclusive of third-party settlement given that the employer has “no control or access to evidence” related to the third-party claim).

D. Sufficiency of Evidence

[¶13] Lastly, the Estate argues that it met its burden of proof by virtue of submission of the contingency fee agreement that Faye Boyle entered with her personal injury attorney and the stipulation that the third-party recovery exceeds the full value of the workers’ compensation claim.

[¶14] The ALJ quoted the Law Court’s instructions relative to the calculation of the “proportionate share” of costs and noted the need for evidence of “the total settlement received” by the Estate. *McKeeman*, 2002 ME 144, ¶ 18. Notably, both parties cited *McKeeman* in their proposed findings and agreed that it controlled the ALJ’s analysis. The calculation of the “proportionate share” set forth by *McKeeman* specifically utilizes the total amount of the settlement. This information was not disclosed by the Estate despite requests by both the ALJ and Lappin Brothers.

[¶15] The Estate argues that the specific amount of the third-party settlement is irrelevant given the stipulation that the value of the settlement exceeds the value of the workers’ compensation claim. Given that stipulation the ALJ could (and did) determine the amount of indemnity and medical benefits relieved, but Lappin Brothers’ share of the cost of collection would remain undeterminable.

[¶16] The contingent fee agreement provides for an attorney fee of “1/3 of the total recovery.” However, as the ALJ noted, it contains an exception in the event of a “court order or administrative claims processing in which the attorney fees are otherwise governed.” The ALJ also noted that the fee agreement referenced a “disbursement sheet reflecting the method by which the attorneys fees would have been calculated and the expenses of litigation....” Despite requests from Lappin Brothers, the Estate failed to produce this disbursement sheet or any other evidence that detailed the costs it incurred in the collection of the third-party recovery.³

[¶17] In light of the formula for calculating the lien specified in *McKeeman* and the absence of specific evidence of the cost of collection, we conclude that the record does not compel the conclusion that the ALJ had sufficient evidence from which to calculate Lappin Brothers’ share of collection costs, to the exclusion of any other inference.

III. CONCLUSION

[¶18] We find no error of law in the ALJ’s determination that the Estate did not meet its burden of proof, and the evidence of record does not compel a contrary conclusion.

³ After the issuance of the Corrected Decision on Remand, the Estate produced a document from the attorney handling the Estate’s third-party claim which purported to show the total recovery and costs associated with the third-party litigation. The board declined to consider this document because it had not been submitted into evidence. This evidentiary ruling has not been appealed.

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.

Attorney for Appellants:
James J. MacAdam, Esq.
MacADAM LAW OFFICE, P.A.
45 Mallett Drive
Freeport, ME 04032

Attorney for Appellee:
Daniel F. Gilligan, Esq.
TROUBH HEISLER, LLC
P.O. Box 1150
Scarborough, ME 04070-1150