JENNIFER L. MARRONE
(Appellant)

v.

H. LAKE & CO., LLC
(Appellee)

and

THE HARTFORD
(Insurer)

Argued: July 9, 2025
Decided: September 26, 2025

PANEL MEMBERS: Administrative Law Judges Murphy, Hirtle, and Biddings
BY: Administrative Law Judge Murphy

[¶1] Jennifer Marrone appeals a decision of a Workers' Compensation Board administrative law judge (*Chabot*, *ALJ*), which denied her Petition for Forfeiture pursuant to 39-A M.R.S.A. § 324(2). Ms. Marrone sought penalties against H. Lake & Co. (hereinafter, "Lake") for unilaterally reducing her board-ordered partial incapacity benefits. Ms. Marrone argued that Lake improperly reduced the benefits without an agreement or board decree in order to recover its lien against settlement proceeds received from a third-party, when the amount of future benefits relieved by the settlement remained undetermined. *See* 39-A M.R.S.A §107; *see also* 39-A M.R.S.A § 205(9)(B)(2). Because, in the circumstances of this case we construe section 107 to permit the unilateral reduction in benefits without obtaining a board decree, we affirm the ALJ's decision denying the Petition for Forfeiture.

I. BACKGROUND

[¶2] On August 22, 2021, Ms. Marrone was working as a caterer for Lake when she was riding in a vehicle that was struck by a drunk driver. She was severely injured and underwent multiple surgeries. Lake began voluntarily paying Ms. Marrone incapacity benefits based on an average weekly wage of $204.57. Thereafter, Ms. Marrone filed a Petition for Award of Compensation for her 2021 work injury.

[¶3] Ms. Marrone also engaged a personal injury attorney to pursue third-party claims against the drunk driver that caused the accident and the establishment that allegedly overserved the drunk driver. The personal injury attorney recovered $500,000.00 in total from the liability carriers of the driver and the establishment.[1] The personal injury attorney held the settlement proceeds in a client trust account until it was ready to be disbursed.

[¶4] In correspondence dated December 19, 2023, Lake's workers' compensation insurer, The Hartford, advised the personal injury attorney that it had paid $315,146.65 in benefits for Ms. Marrone's workers' compensation claim to date and was asserting a lien against the personal injury settlement proceeds. The Hartford advised that after reducing the amount paid by its fair share of attorney's

[1] The personal injury attorney also recovered from Ms. Marrone's own automobile insurance carrier, but Lake and The Hartford are not asserting a lien on that sum.

fees and costs, it would accept $203,654.51 in satisfaction of the lien to date. The Hartford also wrote that it calculated Ms. Marrone's net proceeds from the personal injury settlement as $119,456.18, and planned to take "a future credit" in that amount. To take this credit, the Hartford wrote that it would reduce Ms. Marrone's weekly incapacity benefits to 35.38% until the credit is exhausted.

[¶5] On May 16, 2024, the board held a hearing regarding Ms. Marrone's Petition for Award. On July 3, 2024, the board issued a decree increasing Ms. Marrone's average weekly wage to $409.23 and awarding varying rate partial incapacity benefits from the date of injury and ongoing, based on the difference between her average weekly wage and her actual earnings.

[¶6] In August of 2024, Ms. Marrone's workers' compensation attorney attempted to negotiate The Hartford's lien against Ms. Marrone's third-party recovery. The Hartford's adjuster did not respond to that correspondence, but subsequently sent a second letter to the personal injury attorney asserting the lien. In that letter, The Hartford advised the personal injury attorney that payments made in the workers' compensation case had increased to $366,013.96. After reducing the amount paid for its fair share of attorney's fees and costs, The Hartford indicated it would accept $236,526.05 in satisfaction of the lien for past payments made. The Hartford also wrote that it planned to "exercise a future credit in the amount of $86,584.64" and that it was going to reduce Ms. Marrone's weekly incapacity

benefits to 35.38% until the credit was exhausted. A Modification of Compensation form was filed with the board on the same day, indicating that Ms. Marrone's weekly benefits would be reduced due to a "Holiday from 3rd party recovery per Pari Passu."[2]

[¶7] On October 8, 2024, Ms. Marrone filed her Petition for Forfeiture, pursuant to 39-A M.R.S.A. §324(2).[3]

[¶8] On October 31, 2024, Ms. Marrone's workers' compensation counsel wrote to Lake suggesting the parties resolve the lien and asserting that The Hartford's offer did "not factor in the additional calculation required by the Law Court's decision in *Construction Services v. Stevens*," 2010 ME 108, 8 A.3d 688. Ms. Marrone contends that under *Stevens*, before Lake is permitted to collect on its lien, the parties were required to either reach an agreement on past benefits paid and

[2] "*Pari passu*" is defined as follows: "By an equal progress; equably; ratably; without preference. Used especially of creditors who, in marshalling assets, are entitled to receive out of the same fund without any precedence over each other." *Black's Law Dictionary* 1004 (5th ed. 1979).

[3] Title 39-A M.R.S.A § 324(2) provides, in relevant part:

> **Failure to pay within time limits.** An employer or insurance carrier who fails to pay compensation, as provided in this section, is penalized as follows. For purposes of this subsection, "employer or insurance carrier" includes the Maine Insurance Guaranty Association under Title 24-A, chapter 57, subchapter 3.
>
> > **A.** Except as otherwise provided by section 205, if an employer or insurance carrier fails to pay compensation as provided in this section, the board may assess against the employer or insurance carrier a fine of up to $200 for each day of noncompliance. If the board finds that the employer or insurance carrier was prevented from complying with this section because of circumstances beyond its control, a fine may not be assessed.

future benefits owed, or the board had to rule on the lien issue. Ms. Marrone's counsel also suggested proposed terms for collection of the lien.

[¶9] On November 5, 2024, Ms. Marrone submitted her written argument to the board in support of her pending petition for penalties. She reiterated her contention that under *Stevens,* the parties must reach an agreement or obtain a board decree before Lake could collect its lien mainly because the amount of future benefits relieved had not been established. Ms. Marrone also argued that collection on the lien was premature because she had not personally received any proceeds from the third-party claims, as her personal injury attorney was holding them in escrow.

[¶10] Lake argued that section 107 was self-executing, therefore it was not required to obtain an agreement or decree before collecting its lien. It further argued that the *pari passu* approach, by which it retained a percentage of Ms. Marrone's benefit each week as it became due, was endorsed by the Law Court in *Stevens* and other cases.

[¶11] The ALJ decided the pending petition for penalties based on the parties' submissions. The decree, issued on December 17, 2024, denied the Petition for Forfeiture and request for penalties under section 324. The ALJ determined that Lake is entitled to repayment of its lien less its proportional share of collection costs, and construed section 107 to allow for immediate collection of the lien amount, without

a prior agreement or board decree. The ALJ reminded the parties that if the amount or means by which the offset or recovery is taken becomes an issue, the board has authority to determine the parties' rights under section 107.

[¶12] Ms. Marrone requested further findings of fact and conclusions of law. The Board issued an amended decree but did not alter the outcome. This appeal followed.

II. DISCUSSION

A. Standard of Review

[¶13] 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). The Appellate Division will not disturb a factual finding made by the ALJ absent a showing that it lacks competent evidence to support it. *Dunkin Donuts of Am., Inc. v. Watson*, 366 A.2d 1121, 1125 (Me. 1976).

[¶14] To the extent the Appellate Division is asked to construe a statutory provision, our purpose is to give effect to the Legislature's intent by first looking to the plain meaning of the statutory language, and to construe that language to avoid absurd, illogical, or inconsistent results. *Graves v. Brockway-Smith Co.*, 2012 ME

128, ¶ 9, 55 A.3d 456. We also consider "the whole statutory scheme of which the section at issue forms a part so that a harmonious result, presumably the intent of the Legislature, may be achieved." *Id.* (quotation marks omitted). If the statutory language is ambiguous, we then look beyond the plain meaning and examine other indicia of legislative intent. *Id.*

B. Collection of the Lien under 39-A M.R.S.A. § 107

[¶15] The issues on appeal are (1) whether under 39-A M.R.S.A § 107, before it could collect on its lien, Lake was required to file a petition and obtain a board decree establishing the lien and specifically, the future liability relieved by the third-party settlement; and if so, (2) whether Ms. Marrone is entitled to penalties under section 324 for Lake's failure to obtain that decree.

[¶16] As noted above, section 324(2) authorizes penalties against an employer or insurer for failing to make timely payments pursuant to an agreement or a board decree. Section 107 applies when there is a party other than the employer that has liability to the employee for an injury that occurred at work. It provides, in relevant 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.

[¶17] "[A]n employer's proportionate share of fees and costs upon an employee's settlement with a third party should be calculated with reference both to past benefits paid and future liability relieved, to the extent it can be determined." *McKeeman v. Cianbro Corp.,* 2002 ME 144, ¶ 17, 804 A.2d 406. The Court in *McKeeman* "recognize[d] that . . . the determination of future liability to employers will often be a difficult process requiring a significant factual inquiry." *Id.* ¶ 17 n.5.

[¶18] The ALJ determined that Lake was entitled to collect its lien without first filing a petition and obtaining a board decree. The ALJ reasoned that the plain language in section 107, stating that "the employee *shall* repay to the employer," authorized immediate collection of the lien amount. The ALJ cited to Law Court cases allowing for immediate offsets to be taken under other provisions of the Act containing similar mandatory language.[4] *Foley v. Verizon*, 2007 ME 128, ¶ 23, 931 A.2d

[4] The Maine Legislature has also codified the definition of "shall": "'Shall' and 'must' are terms of equal weight that indicate a mandatory duty, action or requirement." 1 M.R.S.A. § 71(9-A).

1058 (affirming a decree that allowed an employer to take an immediate offset against retirement benefits also received, interpreting the coordination of benefits provision as an exception to the requirements of section 205(9)(B)(1)); *Jordan v. Sears, Roebuck & Co.*, 651 A.2d 358, 360 (Me. 1994) (stating "the use of the word 'shall' in [a prior version of the coordination of benefits statute] suggests that the employer is entitled to an immediate coordination of workers' compensation benefits on the employee's receipt of payments from an employee benefit plan."). *See also Urrutia v. Interstate Brands Int'l*, 2018 ME 24, ¶ 19, 179 A.3d 312 (construing title 39-A M.R.S.A. § 221(3), which states that "[b]enefit payments subject to this section must be reduced," to require a reduction in workers' compensation benefits when an employee also receives Social Security retirement benefits).

[¶19] In *Dionne v. Libby-Ownes Ford Co.*, 565 A.2d 657 (Me. 1989), also cited by the ALJ, the employee sustained a work-related injury from an automobile accident caused by a third party. *Id.* at 657. The employer began paying workers' compensation benefits, and the employee subsequently obtained a third-party settlement. *Id.* The employee repaid the employer the amount of the existing lien up to the time of the settlement. *Id.* The remaining settlement proceeds were used to purchase an annuity for the benefit of the employee that provided for a monthly payment that was less than the monthly benefit amount due to the employee from the employer. *Id.* at 658.

[¶20] The employer unilaterally stopped paying benefits after the settlement.[5] *Id.* The employee filed a petition for review, asserting that the employer was required to file a petition with the board before it began collecting on its lien, and requesting a set-off only for the amount received from the annuity. *Id*.

[¶21] The Commissioner held that the employer had a right to an immediate setoff and was not required to file a petition before stopping workers' compensation payments. *Id*. The Appellate Division reversed on the grounds that the Commission had no jurisdiction to determine the means of enforcing the employer's lien. *Id.* The Law Court, however, vacated the Appellate Division decision, determining that the Commission in *Dionne* did not exceed its statutory authority and had properly resolved the dispute pursuant to Liberty *Mutual Insurance Co. v. Weeks*, 404 A.2d 1006, 1012 (Me. 1979) (holding that the lien created by the Act "secures reimbursement of all payments, even those made to satisfy the carrier's periodically-accruing liability after the disposition of the action against the third person."). *Id.*

[¶22] Ms. Marrone contends the Law Court's decision in *Construction Services Workers' Compensation Group Self Insurance Trust v. Stevens*, 2010 ME 108, 8 A.3d 688, governs this case, and required that Lake either negotiate the lien or file a petition

[5] The cited Law Court decision does not indicate whether the employee was being paid voluntarily or by decree. However, the Appellate Division decision explicitly identifies that fact. *Dionne v. Libby-Owens Ford Co.*, Me. W.C.C. Dec. No. 89-66 (App. Div. 1989) ("The employee received benefits for total incapacity pursuant to Commission decree through May 26, 1987, when benefits were unilaterally suspended by the employer. At no time, did the employee agree to the cessation of weekly benefits.").

with the board before beginning recovery mainly because the future liability relieved by the third-party settlement had not been determined. We disagree.

[¶23] In *Stevens*, the employee sustained a work-related injury, and the employer paid workers' compensation benefits voluntarily. 2010 ME 108, ¶ 2. The employee received a settlement from a product liability lawsuit, structured to include ongoing monthly payments. *Id.* ¶ 3. The employer filed suit in Superior Court seeking a declaration that the employee must repay the section 107 lien from the settlement proceeds, less the amount of the employer's proportionate share of past and future costs, including from the ongoing structured settlement payments. *Id.* ¶ 4. The employer also sought a ruling that it was not responsible for paying its share of the attorney fees and costs associated with future benefits until they became due or until the board issued a decree establishing the employer's future liability. *Id.*

[¶24] The Superior Court acknowledged the employer's right to recover its workers' compensation lien, established the amount of the lien less the employer's proportionate share of the attorney fees and costs related to past benefits paid, and ordered that the employer's share of attorney fees and costs related to future suspended workers' compensation payments be paid as the benefits accrue (*pari passu*), because the evidence did not establish the extent of the employee's entitlement to future benefits. *Id.* ¶ 5.

[¶25] On appeal, the employee contended the Superior Court erred when ordering the employer to pay its proportionate share of attorney fees and costs related to future

benefits relieved as the benefit payments became due, instead of immediately accounting for that share through a reduction of the lien based on the present value of future benefits relieved. *Id.* ¶ 12.

[¶26] The employer in *Stevens* had also filed a petition for review with the board, arguing it was entitled stop making weekly indemnity payments because the employee had refused an offer of suitable employment under 39-A M.R.S.A § 214(1). *Id.* ¶ 15. That petition had been stayed at the employee's request pending judgment on the lien action. *Id.* It was under those circumstances that the Law Court held that a board decree on the petition for review should be issued first to establish the employer's ongoing liability. *Id.* ¶ 19. Although the concurring opinion was concerned that the pending decree would not conclusively determine the employee's entitlement to ongoing benefits,[6] the majority opinion did not express the same reservation. *See id.*

[¶27] *Stevens*, however, is distinguishable from the present case. The Law Court did not require the employer in *Stevens* to file a petition to determine the amount of the lien

[6] The concurring opinion states:

> Although the Board's decision [on the pending petition] will determine whether Dennis refused a reasonable employment offer, it will not fix Dennis's entitlement to benefits going forward. In the future, Dennis could return to work or his medical condition could worsen, rendering him unable to physically perform the offered employment. Thus, regardless of the Board's decision, there will be no finality with respect to Dennis's entitlement to future benefits. Obtaining a decision by the Board, as the Court has instructed, will not aid the Superior Court in this regard.

2010 ME 108, ¶ 36 (*Jabar, J., concurring*).

or to request permission to collect on its lien. Rather, the Court directed that the pending petition regarding entitlement to ongoing benefits be determined before the Superior Court ruled on the amount of the lien. In this case, the board has already issued a decree regarding Ms. Marrone's entitlement to benefits. There is no issue regarding the employer's liability for ongoing benefits thus there is no need for a petition to be filed.

[¶28] Accordingly, we construe the plain, mandatory language in section 107 (stating that "the employee *shall repay* to the employer, out of the recovery against the 3rd person, the benefits paid by the employer under this Act") consistently with the provisions construed by the Law Court in *Foley*, *Jordan,* and *Dionne*, to allow for immediate collection of a section 107 lien. In circumstances such as these, when the employer's liability has been decided, section 107 does not require the employer to reach an agreement or seek a board decree before starting to collect on its lien.[7] Thus, the request for penalties was appropriately denied.

III. CONCLUSION

[¶29] The ALJ properly construed section 107 to allow for immediate collection of the lien and did not misconceive or misapply the law when denying the Petition for Forfeiture pursuant to section 324(2).

[7] As did the ALJ, we remind the parties that if the amount or means by which the offset or recovery is taken becomes an issue, the board has authority to determine the parties' rights under section 107. *See Dionne*, 565 A.2d at 658.

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 Appellant:
Douglas S. Kaplan, Esq.
KAPLAN & GRANT
136 Commercial Street, Suite 302
Portland, ME 04101

Attorneys for Appellee:
Travis C. Rackliffe, Esq.
Kayla A. Estes, Esq.
TUCKER LAW GROUP
P.O. Box 696
Bangor, ME 04402