State of Maine	Supreme Judicial Court sitting as the Law Court Docket no. WCB-24-163
Katherine Stovall, Appellee, v. New England Telephone Co., Appellant.	Appeal from Maine Workers' Compensation Board

Appellee's Brief

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Statement of Facts and Procedural History

The appellee is forgoing this section at this time, *see* M.R. App. P 7A(b), and will, if necessary, address any issue with the appellant's statement of the factual or procedural history in a reply brief, *see* M.R. App. P. 23(c)(2)(C).

Issue Presented for Review

(1) Whether the Appellate Division erred in its interpretation or application of the issue preclusion prong of res judicata.

(2) Whether the Appellate Division erred in its determination of whether the statute of limitations or repose barred a 1996 injury claim.

(3) Whether the Appellate Division erred in declining to remand the case to an individual hearing officer or administrative law judge ("ALJ") to determine the Appellant-Employer's payment obligations.

Summary of the Appellee's Argument

(1) The Appellate Division did not err when it rejected the Appellant-Employer's argument for an expansion of the established rules or principles of administrative res judicata. Res judicata is a judicial doctrine that, to be precise, is applied in administrative proceedings only by analogy. Workers' compensation law is a "creature of statute," and the Court lacks the authority to displace its plain text by compelling claimants to, in effect, consolidate all potential issues connected to a given claim when that claim is litigated. Moreover, there was no decision on the merits that would be adequate for application of res judicata principles in the manner that the Appellant-Employer proposes.

(2) The Appellate Division did not err when it determined that the statutory limitations period had been extended because a 2006 decree has decided that the 2001 injury significantly aggravated the 1996 injury and because the ongoing payment scheme gives the Appellant-Employer contemporaneous notice that its payments for the 2001 injury are in part necessitated by the 1996 injury. Moreover, res judicata should preclude re-litigation of this issue.

(3) Finally, the Appellate Division did not abuse its discretion or otherwise err by declining to issue a remand instead of ordering specific relief itself. The Appellate Division has express statutory authority to decide issues without a remand, and it exercised that authority in this case for logical reasons that were adequately explained in its decision.

Appellee's Argument

Standards of Review

1. The Law Court reviews the Workers' Compensation Board's Appellate Division decisions under "established principles of administrative law, except with regard to … factual findings." Bailey v. City of Lewiston, 2017 ME 160, ¶ 9, 168 A.3d 762. The Court, when deciding an appeal from the Appellate Division, treats the division's decision as the operative decision on appeal. *See id.* ¶ 9; 39-A M.R.S. § 322(1).

2. For the first issue on appeal here: an assertion that the ALJ or Appellate Division erred in a decision on a procedural issue is subject to a deferential standard of review under which the Law Court assures there was no abuse of discretion. *See, e.g.* McAdam v. United Parcel Service, 2001 ME 4, ¶¶ 31 – 35, 763 A.2d 1173 (discovery issue in workers' compensation proceedings). "An abuse of discretion may be found where an appellant demonstrates that the [agency] decisionmaker exceeded the bounds of the reasonable choices available to it, considering the facts and circumstances of the particular case and the governing law." Forest Ecology Network v. Land Use Reg. Commn., 2012 ME 36, ¶ 28, 39 A.3d 74 (quotation

marks omitted). However, if the issue is the interpretation of the Law Court's decisions, then the Appellate Division, of course, is not entitled to that kind of deference, and instead the interpretation is subject to *de novo* review. Michaud v. Caribou Ford Mercury Inc., 2024 ME 74, ¶ 13, _A.3d_.

3. For the second issue: although the appellant's brief has not been filed yet, based on the prior filings it seems likely that its brief will make an argument about factual findings, which are not a proper subject of an appeal in the Law Court. § 322(3). Presumably the Court's grant of an appeal in this case indicates an interest in another aspect of the intermediate appellate decision.

4. For the third issue: a decision of an appellate panel about whether or not to issue a remand or modify a decision directly is an exercise of its express statutory authority to choose one of several procedural options regarding disposition of an appeal, *see* § 321-B(3) ("division, after due consideration, may … modify a decree"), and, thus, is subject to review only for an abuse of discretion, *Forest Ecology Network* ¶ 28.

Res Judicata

5. The res judicata issue here, as indicated above, may be

subject to one of two different standards of review. If the dispositive issue is whether the Appellate Division erred in its exercise of discretion over procedural matters, then the review is deferential and seeks to ensure there was no abuse of discretion. *See Bailey* ¶ 9; Kuvaja v. Bethel Savings Bank. 495 A.2d 804, 806 – 808 (Me. 1985). On the other hand, if the issue is whether the Appellate Division erroneously interpreted Law Court precedents about res judicata, then the review may be *de novo*. *Michaud* ¶ 13. Complicating this analysis, there are two distinct res judicata issues to consider: (1) whether res judicata applies at all to the matter in dispute because it may not have been decided previously; and (2) whether res judicata in workers' compensation litigation extends to issues that could or should have been litigated previously. *See* A. 61 – 63 (2024 appellate division decision ¶¶ 13 – 15).

6. The more deferential standard of review should apply to the issue of whether res judicata in workers' compensation should extend to issues or claims that *might have been* litigated because the Appellate Division was, in effect, deciding discretionary issues of workers' compensation procedure. Procedural issues concerning

litigation are largely committed to the discretion of the Workers' Compensation Board, Dunton v. Eastern Fine Paper Co., 423 A.2d 512, 514 (Me. 1980) (courts "recognize[] the wisdom of deferring to agency expertise in complex areas"), unless contrary to an unambiguous statutory provision, Johnson v. Home Depot USA, Inc., 2014 ME 140, ¶ 9, 106 A.3d 401 (affirming decision where statute did not provide specific procedure), and the Appellate Division did not abuse its discretion here. The Board has statutory and regulatory provisions that govern its quasi-judicial adjudicatory proceedings, *see, e.g.* § 318, but they do not cover every possible procedural issue and, therefore, are supplemented by *ad hoc* procedures or glosses on the black-letter law as circumstances require, *see*, *e.g.* Smith v. Maine Coast Sea Vegetables, Me. W.C.B. No. 20-1 (App. Div. 2020) (no error in ALJ's choice of procedure to address transcription problem where no procedure is specified in black-letter law). The current Appellate Division is adept at separating ALJs' reasonable exercises of discretion from abuses of discretion. *See*, *e.g.* Lawson v. Transworld Systems, Inc., Me. W.C.B. No. 20-24 (App. Div. 2020) (no abuse of discretion where ALJ acted within bounds of authority to decide three procedural

matters); Wallace v. Cooke Aquaculture USA, Inc., Me W.C.B. No. 19-35 (App. Div. 2019) (abuse of discretion where ALJ decided that subject matter jurisdiction defense had been waived).

7. To be precise, res judicata is a *judicial* doctrine, Macomber v. MacQuinn-Tweedie, 2003 ME 121, ¶ 22, 834 A.2d 131 ("a court-made collection of rules"), that is applied in administrative matters by analogy because workers' compensation law is a "creature of statute," Farrow v. Carr Bros. Co., Inc., 393 A.2d 1341, 1343 (Me. 1978), and the Court lacks the authority to displace its plain text under general separation-of-powers principles, *see Kuvaja* 805 (the Workers' Compensation Commission is part of the executive branch and accordingly must be granted due deference). When reviewing a matter to determine a question of law, *see* 4 M.R.S. § 57 (first paragraph), after granting an appeal, *see* 39-A M.R.S. § 322(3), the Court has the authority to establish binding interpretations of the statute through stare decisis, *see* Myrick v. James, 444 A.2d 987, 997 - 998 (Me. 1982) (discussing stare decisis principles); Patterson v. McLean Credit Union, 491 U.S. 164, 172 – 173 (1989) (discussing importance of stare decisis in statutory construction). But that is dramatically different from

"engrafting" provisions onto the plain text of the governing statute, which the court generally declines to do. *See* Li v. CN Brown Co., 645 A.2d 606, 608 (Me. 1994) ("We have been reluctant to engraft common law rules onto the uniquely statutory scheme of workers' compensation law."). In summary, the judicial branch has no authority to impose any rule of res judicata that would abrogate the role of an administrative agency or contravene an agency's enabling statute.

8. Nonetheless, res judicata principles have long been applied to workers' compensation cases in Maine. *See*, *e.g.* Ervey v. Northeastern Log Homes, Inc., 638 A.2d 709, 711 (Me. 1994). This is generally appropriate because administrative "adjudication is a quasi-judicial act," *Forest Ecology Network* n. 11, the Workers' Compensation Board has a statutory mandate to adjudicate claims efficiently, §§ 151-A and § 152(2), and res judicata rules promote "judicial economy," Beegan v. Schmidt, 451 A.2d 642, 644 (Me. 1982). The specific doctrine called *administrative res judicata* "provides that the decisions of state and municipal administrative agencies are to be accorded the same finality that attaches to

judicial judgments." City of Lewiston v. Verrinder, 2022 ME 29, ¶ 8, 275 A.3d 327.

9. Regardless of which standard of review applies, the Appellate Division properly rejected the Employer's proposal to expand administrative res judicata in workers' compensation litigation in a way that would establish mandatory joinder. The Employer's proposed expansion of res judicata doctrine would compel employees to, in effect, consolidate all potential issues connected to a given claim when that claim is litigated, and such an outcome would be completely unmoored from the black-letter law. *See*, *e.g.* § 307 (procedures for filing petitions "to seek a determination of rights"). Neither claim preclusion nor issue preclusion extends as far in workers' compensation as it does in civil litigation, where parties are bound by the rule called joinder that requires, in essence, that in certain situations all potential claims arising from an asserted injury be consolidated for concurrent resolution. *See* M.R. Civ. P. 18 and 19; Ocwen Federal Bank, FSB, v. Gile, 2001 ME 120, ¶¶ 14 – 21, 777 A.2d 275. There is simply no equivalent requirement in Title 39-A or this agency's rules.

10. Even the less deferential standard of review that applies to interpretation of this Court's precedents does not support the Employer-Appellant's argument either because its reliance on various res judicata precedents is misplaced. As the Appellate Division noted, the "might have been litigated" cases cited by the Employer-Appellant arose from civil litigation, not workers' compensation litigation. A. 62 – 63. On the other hand, the Law Court has issued decisions that contradict this joinder argument, holding that litigation over one issue or claim relating to an injury does not preclude further litigation over other issues or claims connecting to that injury. *See* Spencer's Case, 123 Me. 46, 47, 121 A. 236 (1923); Wacome v. Paul Mushero Construction Co., 498 A.2d 593, 594 (Me. 1985).

11. Another problem with New England Telephone/Verizon's proposed application of res judicata is that the prior rounds of litigation decided little about the 1996 injury. The only issues about that injury that were established previously, as far as the undersigned counsel can tell, are: that the Employee-Appellee gave notice to the Employer-Appellant that was adequate for purposes of Pottle v. Bath Iron Works Corp., 551 A.2d 112, 114 – 115 (Me.

1988), *see* A. 65 – 67; that the 2001 injury was causally related to the 1996 injury, albeit to an unclear extent, *see* A. 66; and that the Employer-Appellant accepted the "factual predicate" that the "1996 injury contributed to her incapacity" through a 2005 memorandum of payment, A. 67. Those determinations cannot reasonably be considered adequate for purposes of claim preclusion, rather than issue preclusion, because they did not decide the merits of the 1996 injury claim.

12. The final res judicata point to discuss here is the distinction between its two "prongs," and that is difficult to do without seeing the appellant's actual brief. The prong of res judicata called claim preclusion, *see* Portland Water Dist. v. Town of Standish, 2008 ME 23, ¶ 8, 940 A.2d 1097, generally holds that "when the matter in controversy has once been inquired into and settled by a court of competent jurisdiction it cannot be again drawn in question in another suit between the same parties or their privies." Cianchette v. Verrier, 151 A.2d 502, 509 (Me. 1959). Issue preclusion "concerns factual issues, and applies even when the two proceedings offer different types of remedies." *Portland Water Dist.* ¶ 7. This prong "prevents the relitigation of factual issues already

decided if the identical issue was determined by a prior final judgment, and the party estopped had a fair opportunity and incentive to litigate the issue in a prior proceeding." Cline v. Maine Coast Nordic, 1999 ME 72, ¶ 9, 728 A.2d 686 (internal citations omitted). The petition for leave to appeal did not clearly distinguish between the two prongs, *see* Pet. App. Rev. 6 – 9, and so the undersigned counsel may file a reply brief on this subject under M.R. App. 23(b)(5).

Contemporaneous Notice Issues

13. In its petition for appellate review New England Telephone/Verizon asserted that the Appellate Division erred in its finding that New England Telephone/Verizon made payments on the 2001 injury with contemporaneous notice that the payments were necessitated in part by the 1996 injury. *See* Pet. App. Rev. 3. Again, the undersigned counsel can only make an educated guess about the actual argument that will be advanced, but it seems likely that the argument concerns the character of the payments in dispute. If so, the Employer-Appellant does not have a persuasive argument for at least two reasons. First, the issue of whether or when the parties had contemporaneous notice was mainly a factual

matter, not a disagreement over the law, when litigated below. *See* A. 67. Of course, findings of fact are not subject to appeal by this Court. *See* § 322(3); M.R. App. P. 23(b)(3). The issue of law implicated here is the legal effect of the factual finding of contemporaneous notice, and the Appellate Division, as explained below, did not err in that regard.

14. Second, issue preclusion is fatal to any argument that New England Telephone/Verizon may try to advance now because the notice issue undoubtedly was decided by a valid, final decision of the Workers' Compensation Board in 2006. Under the issue preclusion prong of res judicata, a party is precluded from relitigating an issue that has been already litigated, if the same issue was determined by a final, valid judgment and "the party estopped had a fair opportunity and incentive to litigate the issue in a prior proceeding." *Cline* ¶ 9 (quotation marks omitted). In this case, as the Appellate Division noted, a 2006 decree had already decided this notice issue, A. 66 – 67, and that decree was the product of extensive litigation that certainly was adequate for issue preclusion purposes, *see* A. 4 – 11. *See also* R. 5 – 120 (hearing transcript and decrees).

Remand Issue

15. Again, the undersigned counsel can only make an educated guess about the arguments to be advanced in the opposing party's appellate brief, but the Appellate Division had clear statutory authority under § 321-B(3) to "modify" the contract ALJ's decision rather than remanding the decision to that ALJ. That means that this part of its decision comes under the deferential standard of review for abuse of discretion. *See*, *e.g. McAdam* ¶¶ 31 – 35. Under that standard, there is nothing to support the proposition that the Appellate Division "exceeded the bounds of the reasonable choices available to it," *see Forest Ecology Network* ¶ 28, in this case because it had the authority to do exactly what it did under § 321-B(3). *See also* 90-351 C.M.R. ch. 13, § 10 (Workers' Compensation Board rule referring to the statute and requiring appellate panels to "issue a written decision affirming, modifying, vacating, or remanding" each decision on appeal). Nor should the decision be considered fundamentally unfair or unreasonable under the circumstances because the Employee had been litigating the matter since filing a petition in 2017, A. 74, and a remand inevitably would have further delayed the final payment order for an

indefinite period. In addition, the Employer's "payment obligation is solely a legal issue[,] and the [material] facts are not in dispute." A. 70. The Appellate Division, furthermore, used Law Court precedents for guidance on when it is appropriate to modify a decision on appeal without issuing a remand order. A. 69. The panel consisted of "full-time administrative law judges" who are workers' compensation specialists, § 321-A(2), and they obviously were better qualified to decide this issue than a contract ALJ appointed on an *ad hoc* basis. The contract ALJ made significant, obvious errors in her representation and incorporation of the prior record of litigation, *see* A. 66 – 67 (footnotes 5 and 6), and it would not make rational sense to remand to either that person or a new person who would have lacked familiarity with the many years of litigation history. The Employer-Appellant presumably has no compelling argument to the contrary and instead may be bringing this appeal solely for purposes of delaying its payment obligations as long as possible.

Conclusion

16. In summary, this Court has no valid reason to vacate the Appellate Division's decision under any standard of review, and it

should issue a summary order to the effect that the appeal was improvidently granted. *See* M.R. App. P. 23(c)(4).

12/10/2024
date

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