THERESA CARON
(Appellant)

v.

BARBER FOODS
(Appellee)

and

MAINE EMPLOYERS' MUTUAL INSURANCE CO.
(Insurer)

and

ONEBEACON INSURANCE CO.
(Insurer)

Conference held: September 22, 2016
Decided: November 30, 2017

PANEL MEMBERS: Administrative Law Judges Knopf, Goodnough, and Jerome
BY: Administrative Law Judge Goodnough

[¶1] Theresa Caron appeals from a decision of a Workers' Compensation Board administrative law judge (*Collier*, *ALJ*) denying her Petition for Award related to a 1979 shoulder injury.[1] Ms. Caron contends that the ALJ (1) erred by failing to make sufficient findings regarding whether Barber Foods met its burden of proof pursuant to *Patriotti v. General Electric Co*, 587 A.2d 231, 233 (Me. 1991); and (2) misconceived the law when determining that failure to file a first

[1] The ALJ also denied Petitions for Award and for Medical and Related Services for a 2011 low back injury, and granted in part a Petition for Award related to a 2005 wrist injury. Those petitions are not at issue in this appeal.

report of injury in this case did not toll the running of the ten-year period of repose in 39 M.R.S.A. § 95 (1989), *see Young v. Mead Westvaco Corp*., Me. W.C.B. No. 13-7 (App. Div. 2013). We agree with Ms. Caron that the ALJ failed to make sufficient findings of fact regarding Barber Foods' burden under *Patriotti*. We therefore vacate the decision in part and remand for further findings.

BACKGROUND & DISCUSSION

[¶2] On March 5, 2012, Theresa Caron filed a Petition for Award related to a 1979 left shoulder injury incurred while working for Barber Foods. Barber Foods asserted a ten-year statute of repose defense to this claim pursuant to 39 M.R.S.A § 95. Section 95 provides, in relevant part:

> Any employee's claim for compensation under this Act shall be barred unless an agreement or petition . . . shall be filed within 2 years after the date of the injury, or, if the employee is paid by the employer or the insurer, without the filing of any petition or agreement, within 2 years of any payment by such employer or insurer for benefits otherwise required by this Act. The 2-year period in which an employee may file his claim does not begin to run until his employer, if he has actual knowledge of the injury, files a first report of injury as required by section 106 of the Act. . . . No petition of any kind may be filed more than 10 years following the date of the latest payment made under this Act. For the purposes of this section, payments of benefits made by an employer or insurer pursuant to section 51-B shall be considered payments under a decision unless a timely notice of controversy has been filed.

[¶3] An employer, when asserting the ten-year statute of repose defense, bears the burden to prove that no payments have been made during the ten-year period. The Law Court in *Patriotti* described how that burden is to be met:

> For the employer, the burden imposed is not onerous and can be satisfied in the first instance with a modest amount of information. The employer need only show that its insurance company or companies had the coverage throughout the pertinent period, that it or they routinely maintained and preserved records of all payments made on claims during that period, and that the last payment on a claim by the employee was more than ten years prior to the filing of the current claim.

Patriotti, 587 A.2d at 233.

[¶4] Barber Foods asserted that there were two distinct ten-year periods at issue, both of which operated to bar the claim. The first ran from 1979 through 1991; the second ran from 1991 through 2012. Evidence adduced at the hearing persuaded the ALJ that Barber Foods had failed to meet its burden under *Patriotti* for the 1979-1991 timeframe. The ALJ then proceeded to consider the merits of Ms. Caron's claim regarding the post-1991 period.

[¶5] Although the ALJ commented on the relevant evidence,[2] he did not render findings on whether the burden was met because he proceeded to deny the

[2] With regard to the *Patriotti* burden for the post-1991 period, the ALJ stated:

> [OneBeacon's representative] testified that OneBeacon's current computer system shows all claims and payments beginning in October of 1984, and that this system shows no such claims by or payments to Theresa Caron from that date up until the receipt of the current petition in March of 2012. That is a period of longer than ten years, which certainly could give rise to a separate argument for application of the ten-year statute of repose from Section 95.

The ALJ also stated in the decision that "a OneBeacon claims examiner. . . testified that the insurer has no records of any benefit payments, or even of any claim at all before 2012. Even taken together, these records are fragmentary and incomplete."

statute of repose defense on other grounds—that the period had been tolled by Barber Foods' failure to file a first report of injury.

[¶6] Barber Foods filed a Motion for Additional Findings of Fact and Conclusions of Law, and both parties filed proposed findings. In response, the ALJ reversed his decision on the 1979 injury, determining, pursuant to *Young*, that the ten-year period of repose in section 95 was not tolled due to the failure to file a first report of injury. Thus, the ALJ ultimately concluded that the claim for the 1979 injury was time-barred.

[¶7] On appeal, Ms. Caron contends that (1) the *Young* decision was wrongly decided[3]; but (2) even if *Young* represents a correct interpretation of section 95, it remained incumbent on the ALJ to make findings with respect to whether Barber Foods met its burden of proof under *Patriotti*.

[¶8] We agree with the second contention. Both parties requested additional findings on the statute of repose issue. Given testimony from Barber Foods that persuaded the ALJ that it had failed to meet its burden for the earlier 1979-1991 timeframe, the ALJ was required to revisit Ms. Caron's original argument, not

[3] In *Young*, the Appellate Division held that "section 95 precludes a petition from being 'filed more than 10 years following the date of the latest payment made under this Act'—regardless of whether the two-year limitation period for filing a claim has expired. And, also pursuant to the plain language, the employer's failure to file a required first report of injury does not toll the running of the ten-year period." *Young v. Mead Westvaco Corp*., Me. W.C.B. No. 13-7, ¶ 21 (App. Div. 2013). Ms. Caron contends that the Appellate Division panel in *Young* misconstrued section 95, and she reasserts arguments made and addressed by the panel in that case. Should the ALJ determine that Barber Foods met its burden of proof under *Patriotti*, we find no error in its application of the *Young* rationale in this case.

definitively addressed, regarding whether Barber Foods "routinely maintained and preserved records of all payments made on claims" during the second ten-year period. These findings are necessary to create an adequate basis for appellate review. *See* 39-A M.R.S.A. § 318 (Supp. 2016); *Coty v. Town of Millinocket*, 444 A.2d 355, 357 (Me. 1982). Accordingly, we remand the case for additional findings of fact and conclusions of law.

The entry is:

> The ALJ's decision is vacated in part and remanded for additional findings of fact and conclusions of law regarding whether Barber Foods met its burden of proof under *Patriotti v. General Electric Co.*, 587 A.2d 231, 233 (Me. 1991).

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 (Supp. 2016).

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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