KATHERINE STOVALL
(Appellant)

v.

NEW ENGLAND TELEPHONE COMPANY
(Appellee)

and

SEDGWICK CLAIMS MANAGEMENT SERVICES

Conference held: May 7, 2020
Decided: December 21, 2021

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

[¶1] Katherine Stovall appeals from a decision of a Workers' Compensation Board administrative law judge (*McElwee, contract ALJ*) denying her Petition for Restoration regarding a September 12, 1996, work injury. Ms. Stovall contends that the contract ALJ erred when determining that New England Telephone Company's obligation to pay benefits for the 1996 work injury had been adjudicated with board decisions dated August 6, 2006, and July 6, 2011, and that no open payment obligation existed. She asserts that New England Telephone's obligation to pay remains open because it failed to follow the requirements of 39-A M.R.S.A. § 205(9)(B) (Pamph. 2020) before ceasing payment on the 1996 injury. New England Telephone contends, among other things, that the claim related to the 1996 date of injury is barred by the doctrine of *res judicata* or the statute of limitations.

Because we conclude that the contract ALJ applied an incorrect legal standard when determining if Ms. Stovall's claims regarding the 1996 date of injury survive, we vacate the decision and remand for additional proceedings.

I. BACKGROUND

[¶2] Katherine Stovall sustained a work-related injury on September 12, 1996, while employed by the New England Telephone Company. New England Telephone filed a memorandum of payment with the board on May 17, 2005, accepting Ms. Stovall's injury and establishing a compensation payment scheme of total incapacity benefits at the rate of $491.35 per week.

[¶3] In 2004, Ms. Stovall filed a Petition for Award regarding her injury date of September 12, 1996. In addition, she filed a Petition for Award alleging a second injury date with New England Telephone of June 29, 2001. A hearing occurred on February 27, 2006, at which time Ms. Stovall dismissed the petition regarding the 1996 injury. The dismissal was granted on the record without objection from counsel for New England Telephone. The hearing went forward on the 2001 injury, resulting in a board decision dated August 6, 2006.

[¶4] The caption of the 2006 decision listed both injury dates but the decision recited the procedure and dismissal of the petition regarding the 1996 injury date.

The board (*Smith, contract hearing officer*)[1] found that Ms. Stovall experienced a work-related injury on June 29, 2001, and that the injury was a significant aggravation of the earlier 1996 work injury to the same body parts. The decree required New England Telephone "to continue paying the employee total compensation benefits based on her $978.22 average weekly wage at the time of her June 29, 2001 injury with fringe benefits of $10,666.56 [sic] until the date of this decree." The decree further provided that Ms. Stovall was "entitled to ongoing benefits at the rate of 40%." The decree did not address the 1996 injury date. Up until the 2006 decree, New England Telephone had been paying total incapacity benefits on the 1996 injury pursuant to the 2005 memorandum of payment.

[¶5] In 2010, New England Telephone filed a Petition for Review, asserting that it had paid all partial incapacity benefits to which Ms. Stovall was entitled for the 2001 work injury. 39-A M.R.S.A. § 213 (Pamph. 2020). The 2010 Petition for Review refers only to the 2001 work injury. The contract hearing officer granted the Petition by decree dated July 6, 2011, determining that Ms. Stovall's level of permanent impairment did not exceed the threshold that would entitle her to partial incapacity benefits for the duration of her disability, and that she had received the maximum number of benefit payments to which she was entitled. *See id.*; *see also*

[1] Pursuant to P.L. 2015, ch. 297 (effective Oct. 15, 2015), Workers' Compensation Board hearing officers licensed to practice law are now designated as administrative law judges (ALJ). The decisions made by contract hearing officer Smith, however, were made before this change.

Me. W.C.B. Rule, ch. 2. The caption of the decision listed both of Ms. Stovall's injury dates but the decision did not address the effects of or payments for the 1996 injury. Thereafter, New England Telephone ceased all payment of incapacity benefits to Ms. Stovall.

[¶6] Shortly before six years from the date of the 2011 decision, Ms. Stovall filed a Petition for Restoration regarding her 1996 work injury, claiming that the 2005 memorandum of payment remained in effect because no interim board decision had permitted New England Telephone to cease paying benefits on the 1996 date of injury, citing 39-A M.R.S.A. § 205(9)(B)(2).[2] New England Telephone argued that

[2] Title 39-A M.R.S.A. § 205(9)(B)(2) provides:

> **9. Discontinuance or reduction of payments**. The employer, insurer or group self-insurer may discontinue or reduce benefits according to this subsection.
>
> . . .
>
> **B.** In all circumstances other than the return to work or increase in pay of the employee under paragraph A, if the employer, insurer or group self-insurer determines that the employee is not eligible for compensation under this Act, the employer, insurer or group self-insurer may discontinue or reduce benefits only in accordance with this paragraph.
>
> . . .
>
> (2) If an order or award of compensation or compensation scheme has been entered, the employer, insurer or group self-insurer shall petition the board for an order to reduce or discontinue benefits and may not reduce or discontinue benefits until the matter has been resolved by a decree issued by an administrative law judge. The employer, insurer or group self-insurer may reduce or discontinue benefits pursuant to such a decree pending a motion for findings of fact and conclusions of law or pending an appeal from that decree. Upon the filing of a petition, the employer may discontinue or reduce the weekly benefits being paid pursuant to section 212, subsection 1 or section 213, subsection 1 based on the amount of actual documented earnings paid to the employee after filing the petition. The employer shall file with the board the documentation or evidence that substantiates the earnings and the employer may discontinue or reduce weekly benefits only for weeks for which the employer possesses evidence of such earnings.

the prior board decisions pertained to both the 1996 and 2001 work injuries, and therefore, Ms. Stovall's claim was barred by the doctrine of *res judicata*. In the alternative, New England Telephone Company argued that Ms. Stovall's claim was barred by the statute of limitations.

[¶7] In a decision dated January 17, 2019, the board (*McElwee, contract ALJ*) found that the prior board decisions had adjudicated Ms. Stovall's right to benefits for her 1996 injury, and that New England Telephone had no outstanding payment obligation on her claims. Alternatively, the contract ALJ found that "absent any evidence of a change of the employee's condition between the 7/6/11 decision and 6/28/17 petition, her claim is barred by the doctrine of laches."

[¶8] Ms. Stovall filed a motion for further findings of fact and conclusions of law pursuant to 39-A M.R.S.A. § 318 (Pamph. 2020). The board issued further findings and conclusions dated April 25, 2019, but did not alter the substance of the original decision. This appeal followed.

II. DISCUSSION

A. Standard of Review

[¶9] 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. Stovall 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 (quotation marks omitted). The failure to issue findings in support of a decision that are adequate for appellate review constitutes error and may require remand from the Appellate Division. *See Cote v. Town of Millinocket*, 444 A.2d 355, 359, n.5 (Me. 1982) ("The Commissioner's failure to articulate a basis for his failure to make findings when proposed findings are submitted will in most instances result in a remand of the action to the Commission.").

B. *Res Judicata* and Section 205(9)(B)

[¶10] Ms. Stovall contends the board erred when determining that her Petition for Restoration is barred on the basis that her claims regarding the 1996 injury were previously adjudicated. She asserts that the 2006 decree acknowledges that her petition regarding the 1996 work injury had been dismissed and she asserts that the 1996 injury was not litigated in the proceedings that resulted in the 2006 or 2011 decrees. She maintains that the 2005 memorandum of payment establishes a compensation payment scheme that may be altered only by a decision of the board. 39-A M.R.S.A. § 205(9)(B)(2). In the absence of such a decision, she contends that

New England Telephone was not authorized to reduce or discontinue the benefit scheme set forth in the 2005 memorandum of payment. *Id.*

[¶11] New England Telephone contends that the claims regarding the 1996 date of injury were or should have been litigated in the prior proceedings and are therefore barred by the doctrine of *res judicata*. Alternatively, among other arguments, New England Telephone contends the 1996 claim is barred by the statute of limitations.

[¶12] The common law doctrine of *res judicata* applies to the administrative law setting of Maine's Workers' Compensation Act and generally precludes relitigating decided disputes. *Folsom v. New England Tel. & Tel. Co.*, 606 A.2d 1035, 1039 (Me. 1992). The doctrine bars a cause of action when: (1) the same parties or their privies are involved in both actions; (2) a valid final judgment was entered in the prior action; (3) the matters presented for decision in the second action were, or might have been, litigated in the first action;[3] and (4) both cases involve the

[3] In Workers' Compensation proceedings, *res judicata* is read narrowly to preclude only issues actually litigated. *See Spencer's Case*, 123 Me. 46, 47, 121 A. 236 (1923) (holding that litigation resolving injury to two fingers did not bar later litigation for injury to the thumb arising from the same occurrence); *Wacome v. Paul Mushero Constr. Co.*, 498 A.2d 593 (Me. 1985) (holding that litigation establishing a foot injury did not preclude the employee from later claiming that he injured his back in the same incident); *see also Madore v. Antonio Levesque & Sons, Inc.*, Me. W.C.B. No. 21-29, ¶ 11 (Me. 2021); *Oleson v. Int'l Paper*, Me. W.C.B. No. 14-29, ¶ 19 (App. Div. 2014).

same cause of action. *Johnson v. Shaw's Distribution Ctr.*, 2000 ME 191, ¶ 6, 760 A.2d 1057.

[¶13] At issue, therefore, is whether the compensation payment scheme established in the 2005 memorandum of payment for the 1996 work injury was litigated and adjudicated in the proceedings that resulted in the 2006 or 2011 board decisions.

[¶14] The contract ALJ in this case found that the prior decrees issued in 2006 and 2011 related to both dates of injury because: (1) the decisions bore the docket numbers for each of Ms. Stovall's injuries; (2) the second injury was "a significant aggravation, *but an aggravation only*, of the 1996 injury"; and (3) "absent any evidence whatsoever that the combined effects of the separate injuries could be divided in any way . . . they became the *same condition at the time of the second injury*."[4] Thus, the contract ALJ concluded that the "[t]he employer's petition for

[4] We note that the 2006 decision states:

> The Board finds that Ms. Stovall suffered a new gradual injury as of June 29, 2001. Her injury was supported by evidence which demonstrated much more serious symptoms than in the past and included both of her shoulders hurting, dropping items, unable to perform simple everyday tasks including tying her shoes and being unable to do household work such as vacuuming. This finding is also based on the opinion of Dr. Cathcart who agreed with the statement that "Ms. Stovall had, in fact, suffered a new injury, namely, that there was now a significant aggravation of her underlying condition."

We further note an employee may sustain two successive gradual injuries within a single period of employment when "both the severity and nature of the employee's symptoms changed over time to such an extent as to produce a legitimate second injury." *Eck v. Verso Paper,* Me. W.C.B. No. 16-20, ¶ 8 (App. Div. 2016).

review of incapacity of 8/30/10 was, in fact, satisfaction of the requirements of §205(9)(B)(2) to terminate benefits *for both injuries*; and that such benefits were properly terminated by the 7/6/11 decision."[5]

[¶15] This analysis, however, does not address whether the 1996 injury claim was actually litigated and adjudicated in 2006 or 2011. The contract ALJ did not analyze the issue by application of the established legal framework, set forth above, and did not issue findings, upon request, consistent with that framework. Because the contract ALJ both misconceived and misapplied the law, the decision must be vacated.

III. CONCLUSION

[¶16] The decision is vacated and remanded for further analysis of whether Ms. Stovall's claim for ongoing benefits regarding the injury of September 12, 1996, was litigated and adjudicated by prior board decisions and therefore barred by the doctrine of *res judicata*. If on remand, it is determined that the 1996 claim is not barred on that basis, the remaining issues, including whether the claim is barred by the applicable statute of limitations and whether New England Telephone acted in

[5] With regard to the alternative conclusion that "absent any evidence of a change in the employee's condition between the 7/6/11 decision and the 6/28/17 petition, her claim is barred by the doctrine of laches," Ms. Stovall contends that any reliance on the doctrine of laches to resolve this case was legal error. We agree with this contention. *Flanigan v. State of Me. Dep't of Inland Fisheries & Wildlife*, Me. W.C.B. No. 17-12, ¶ 10 (App. Div. 2015) ("Workers' compensation law in Maine is uniquely statutory in nature and equitable remedies [including laches] are not available under the Act." (citing *Hird v. Bath Iron Works*, 512 A.2d 1035, 1037 (Me. 1986)).

accord with 39-A M.R.S.A. § 205(9)(B)(2) when deviating from the payment scheme established in the 2005 memorandum of payment, should be addressed.

The entry is:

> The contract administrative law judge's decision is vacated and the matter remanded for proceedings consistent with this decision.

ALJ Knopf, concurring

[¶17] I join the majority in vacating and remanding this matter for further analysis of whether Ms. Stovall's claim for ongoing benefits regarding the injury of September 12, 1996, is barred by the doctrine of *res judicata*. I differ slightly from the majority, however, in the standard to be used in that determination.

[¶18] While I agree that the Law Court has in some cases applied the doctrine of *res judicata* narrowly to preclude only issues actually litigated, the types of cases cited by the majority in which the Law Court has addressed the issue have been largely limited to cases involving a different body part than adjudicated earlier. *See Spencer's Case*, 123 Me. 46, 121 A. 236 (1923) (holding that litigation resolving injury to two fingers did not bar later litigation for injury to the thumb arising from the same occurrence); *see also Wacome v. Paul Mushero Const. Co.*, 498 A.2d 593 (Me. 1985) (holding that litigation establishing a foot injury did not preclude the employee from later claiming that he injured his back in the same incident). I do not

read these cases, however, as abandoning the third element of the standard set forth in *Johnson v. Shaw's Distribution Center*, 2000 ME 191, 760 A.2d 1057, that *res judicata* bars a cause of action when the matters presented for decision in the second action were, or might have been, litigated in the first action. The types of cases in which the Law Court has dealt with the issue have not been broad enough in subject to convince me that the standard articulated in *Johnson* no longer applies.

[¶19] Further, while the Appellate Division has recently limited application of the doctrine in a case involving medical and related expenses payment, *see Madore v. Antonio Levesque & Sons, Inc*., Me. W.C.B. No. 21-29 (Me 2021), that does not negate the standard articulated by the Law Court in *Johnson*.

[¶20] Therefore, on remand, I would instruct the ALJ to analyze this case using the standard articulated in *Johnson* paying particular attention to the third and fourth elements, namely: were the matters presented for decision in the later action actually litigated or might they have been in the earlier action; and did both cases involve the same cause of action.

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. 2020).

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:
Christine Casa, Esq.
BOYNTON WALDRON DOLEAC WOODMAN & SCOTT
82 Court Street
Portsmouth, NH 03801

Attorney for Appellee:
Richard D. Tucker, Esq
TUCKER LAW GROUP
P.O. Box 696
Bangor, ME 04402