RICHARD PRATT
(Appellee)

v.

S.D. WARREN CO.
(Appellant)

and

CANON COCHRAN MGMT. SERVS., INC.
(Insurer)

Argued: July 20, 2022
Decided: January 3, 2023

Panel Members: Administrative Law Judges Rooks, Knopf, and Stovall
By: Administrative Law Judge Knopf

[¶1] S.D. Warren appeals from a decision of a Workers' Compensation Board administrative law judge (*Chabot, ALJ*) denying S.D. Warren's Petition to Determine Permanent Impairment, denying Richard Pratt's Petition for Review and granting Mr. Pratt's Petition to Determine Social Security Offset. S.D. Warren contends the ALJ erred by stacking permanent impairment from prior work-related shoulder injuries (previously determined to have caused no incapacity) onto permanent impairment from a 2011 work-related back injury without proof of changed circumstances. *See* 39-A M.R.S.A. § 213(1-A)(B).

[¶2] S.D. Warren further contends the ALJ erred in determining the amount of Mr. Pratt's old-age social security benefit that could be coordinated with his

incapacity benefit, including whether certain cost-of-living adjustments were properly excluded from the offset amount. *See* 39-A M.R.S.A. § 221. We affirm the decision.

I. BACKGROUND

[¶3] Mr. Pratt's case has been the subject of prior board decrees. A 2012 decree established that Mr. Pratt sustained a number of work injuries, including an October 29, 2004, low back and right shoulder injury, a January 26, 2007, left shoulder injury, and a January 31, 2011, low back injury. In that decree, the board (*Jerome, HO*)[1] ordered, among other things, payment of ongoing partial incapacity benefits based on the January 31, 2011, back injury, reduced by imputed earnings and pension benefits. The hearing officer granted the protection of the Act for the 2004 and 2007 injuries but determined those injuries did not contribute to Mr. Pratt's incapacity at that time.

[¶4] Mr. Pratt applied for social security disability benefits at age 63. He received those benefits until July 2015 when he turned 66, his full retirement age for social security purposes. His disability benefits then automatically converted to old-age social security benefits. Mr. Pratt received two months of old-age social security benefits before notifying the Social Security Administration he was electing to defer

[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 (ALJs). The 2012 decision was issued before this change.

payment until he reached the age of 70, consistent with 20 C.F.R. § 404.313. S.D. Warren coordinated the old-age social security benefits and workers' compensation benefits, as allowed by title 39-A M.R.S.A. § 221(3)(A)(1), for one month.[2]

[¶5] In 2017, S.D. Warren filed a Petition for Approval of Discontinuance of Incapacity Benefits, arguing Mr. Pratt failed to comply with title 39-A M.R.S.A. § 221(4), which requires employees receiving workers' compensation benefits to apply for old-age social security benefits when they reach the appropriate age. In a decree dated January 5, 2017, the board (*Jerome, ALJ*) determined Mr. Pratt

[2] Title 39-A M.R.S.A. § 221 provides, in relevant part:

> **1. Application.** This section applies when either weekly or lump sum payments are made to an employee as a result of liability pursuant to section 212 or 213 with respect to the same time period for which the employee is also receiving or has received payments for:
>
> **A.** Old-age insurance benefit payments under the United States Social Security Act, 42 United States Code, Sections 301 to 1397f;
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> . . .
>
> **3. Coordination of benefits.** Benefit payments subject to this section must be reduced in accordance with the following provisions.
>
> **A.** The employer's obligation to pay or cause to be paid weekly benefits other than benefits under section 212, subsection 2 or 3 is reduced by the following amounts:
>
> **(1)** Fifty percent of the amount of the old-age insurance benefits received or being received under the United States Social Security Act. For injuries occurring on or after October 1, 1995, such a reduction may not be made if the old-age insurance benefits had started prior to the date of injury or if the benefits are spouse's benefits.
>
> . . . .
>
> **B.** A credit or reduction under this section may not occur because of an increase granted by the Social Security Administration as a cost-of-living adjustment granted after the benefits are coordinated.
>
> . . . .
>
> **D.** Except as provided in subsections 6 and 7, a credit or reduction of benefits otherwise payable for any week may not be taken under this section until there has been a determination of the benefit amount otherwise payable to the employee under section 212 or 213 and the employee has begun receiving the benefit payments.

complied with his obligation to apply for those benefits but found the Workers' Compensation Act did not prohibit him from deferring their receipt. The Appellate Division affirmed the ALJ's decision, determining "no language in section 221 prohibits an employee from deferring receipt of social security retirement benefits until a date after regular retirement age.…" *Pratt v. S.D. Warren Co.*, Me. W.C.B. No. 19-13, ¶ 10 (App. Div. 2019). The appellate panel reasoned "[w]hen Mr. Pratt begins receiving social security retirement benefits, S.D. Warren will be entitled to coordinate those benefits with any incapacity benefits being paid, consistent with section 221(3)." *Id.*

[¶6] In 2015, when Mr. Pratt was 66 years old, his monthly old-age social security benefit was $2392.90 per month. In 2019, when he had reached age 70, the amount had increased to $3305.90. Although Mr. Pratt's benefits recommenced in July 2019, S.D. Warren continued to pay partial incapacity benefits without taking an offset until July 2020. S.D. Warren discontinued partial incapacity benefits on July 19, 2020, after determining the social security offset was greater than the partial incapacity benefit owed.

[¶7] Thereafter, Mr. Pratt filed a Petition for Review[3] and a Petition to Determine Social Security Offset, and S.D. Warren filed a Petition to Determine the

[3] Originally pending in this litigation were Mr. Pratt's Petition for Review, and S.D. Warren's Petition to Terminate Benefits and Petition to Determine the Extent of Permanent Impairment. At S.D. Warren's request, its petitions were dismissed without prejudice in September 2020. Then, on December 28, 2020, S.D. Warren filed the pending Petition to Determine the Extent of Permanent Impairment. Concomitant

Extent of Permanent Impairment. In a November 2021 decree, the board (*Chabot, ALJ*) denied Mr. Pratt's Petition for Review, but granted his Petition to Determine Social Security Offset, which the ALJ determined to be $364.46 a week. The ALJ further determined S.D. Warren was obligated to pay partial incapacity benefits in the amount of $10.13, the difference between compensation rate of $374.59 and the social security offset of $364.46. The ALJ arrived at the offset amount by excluding any increase in the social security benefit between 2015 and 2019 due to cost-of-living increases but including any increase in the benefit due to Mr. Pratt's deferral of receipt until age 70 from July 20, 2020, ongoing.

[¶8] The ALJ further determined S.D. Warren was entitled to a credit of $21,241.75 for benefits paid from July 2019 to July 2020 while Mr. Pratt received both his social security retirement benefits and full workers' compensation benefits, which eliminated its obligation to pay incapacity benefits for the foreseeable future (over 40 years at the rate determined by the ALJ).

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with his position paper, Mr. Pratt requested the board dismiss his petition, but S.D. Warren objected because at that point, the case had already been litigated and S.D. Warren intended to use Mr. Pratt's Petition for Review to seek termination of benefits pursuant to the durational cap. The board denied Mr. Pratt's request. Although caselaw establishes that a Petition for Review, which calls into question the level of incapacity, may result in an increase or decrease in benefits regardless of which party files the petition, *see Boulanger v. S.D. Warren*, Me. W.C.B. No. 19-1, ¶ 45 (Me. 2019), additional issues are involved when an employer seeks to terminate benefits pursuant to the durational cap. The better practice is to proceed on petitions that more closely correlate with the relief sought and burdens assigned. Nonetheless, the parties in this case have proceeded as if an employer's Petition to Terminate Benefits Pursuant to the Durational Limit is pending (and there has been no objection to doing so). This is clear from the record of mediation, the hearing transcript, and the position papers of the parties. Further, the ALJ analyzed the case as if that type of petition were pending, as reflected in the decision, and the arguments of the parties on appeal reflect their understanding that the respective burdens in this case are those under an employer's Petition to Terminate Benefits Pursuant to the Durational Limit. The Appellate Division reviews this case accordingly.

[¶9] With regard to the Petition for Review, the ALJ determined S.D. Warren failed to carry its ultimate burden of persuasion that Mr. Pratt's permanent impairment level fell below the threshold for continued partial benefit payments based on evidence Mr. Pratt had sustained 10% permanent impairment from the 2011 work injury, and 2% permanent impairment each from the 2004 and 2007 work injuries. The ALJ thus denied S.D. Warren's request to terminate payment of partial incapacity benefits. S.D. Warren requested further findings of fact and conclusions of law, which the ALJ denied. S.D. Warren appeals.

II. DISCUSSION

A. Standard of Review

[¶10] The role of the Appellate Division is "limited to assuring that the [ALJ's] factual 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." *Pomerleau v. United Parcel Serv.*, 464 A.2d 206, 209 (Me. 1983) (quotation marks omitted). When a party requests and proposes additional findings of fact and conclusions of law, as was done in this case, "we review only the factual findings actually made and the legal standards actually applied" by the ALJ. *Daley v. Spinnaker Indus.*, 2002 ME 134, ¶ 17, 803 A.2d 446 (quotation marks omitted).

[¶11] "When construing provisions of the Workers' Compensation Act, our purpose is to give effect to the Legislature's intent." *Hanson v. S.D. Warren Co.*, 2010 ME 51, ¶ 12, 997 A.2d 730. "In so doing, we first look to the plain meaning of the statutory language, and construe that language to avoid absurd, illogical, or inconsistent results." *Id.* 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." *Davis v. Scott Paper Co.*, 507 A.2d 581, 583 (Me. 1986); *see also Graves v. Brockway Smith Co.*, 2012 ME 128, ¶ 9, 55 A.3d 456.

B. Duration of Disability Benefits

[¶12] S.D. Warren contends the ALJ erred in determining Mr. Pratt met his burden of production with evidence that demonstrated a genuine issue exists regarding whether his permanent impairment level exceeds the threshold for entitlement to partial incapacity benefits for the duration of his disability. S.D. Warren asserts the finding in the 2012 decree that Mr. Pratt suffered no incapacity on account of the 2004 and 2007 work injuries is binding, and because Mr. Pratt failed to provide evidence of changed circumstances, the determination in the current decree that Mr. Pratt sustained permanent impairment from those injuries is barred by the doctrine of *res judicata*. To address these contentions, we look to the statutory provisions governing partial incapacity benefits; the respective burdens of

production, proof, and persuasion born by the parties in this case; and the application of the doctrine of *res judicata*.

1. Threshold for Partial Benefit Payments Beyond 520 Weeks

[¶13] Title 39-A M.R.S.A. § 213 governs partial incapacity benefits and their duration. For Mr. Pratt's dates of injury, partial incapacity benefits are subject to a durational limit of 520 weeks. *See* 39-A M.R.S.A. § 213(1)(A) (setting a 260-week limit subject to extension); Me. W.C.B. Rule, ch. 2, § 2(5) (extending the 260-week limitation to 520 weeks). Employees are exempt from this cap, however, if their injuries result in a whole-body permanent impairment rating above a certain threshold percentage. *See* 39-A M.R.S.A. § 213(1)(A) (setting a 15% threshold subject to modification). Mr. Pratt, who was injured in 2011, is subject to the 520-week cap unless his permanent impairment rating exceeds a 12.0% threshold. *See* Me. W.C.B. Rule, ch. 2, § 1(4).

[¶14] Permanent impairment from prior work injuries may be "stacked" onto permanent impairment from the injury at issue under conditions outlined in section 213(1-A). Section 213(1-A)(B)(1), applicable here, authorizes the combination of permanent impairment from the injury at issue with permanent impairment from

> [a]ny prior injury that arose out of and in the course of employment for which a report of injury was completed pursuant to section 303 and the employee received a benefit or compensation under this Title, which has not been denied by the board, and that combines with the work injury at issue in the determination to contribute to the employee's incapacity[.]

2. Respective Burdens

[¶15] When an employer seeks to terminate benefits based on the durational limit, the employer bears an ultimate burden to prove that the employee's permanent impairment level is below the statutory threshold. *Farris v. Georgia-Pacific Corp.*, 2004 ME 14, ¶ 17, 844 A.2d 1143. The employee, however, is "responsible for raising the issue of whole body permanent impairment, and of presenting sufficient evidence to demonstrate that a genuine issue exists with respect" to whether the impairment level exceeds the cap. *Id.* ¶ 1. The employee's burden requires the production of "evidence that, if believed, could provide a factual basis for a finding in the employee's favor," meaning more than mere speculation and including medical evidence of a percentage rating sufficient to yield a whole-body permanent impairment that exceeds the applicable threshold. *Jensen v. S.D. Warren Co.*, Me. W.C.B. No. 17-26, ¶ 16 (App. Div. 2017).[4]

[¶16] Thus, Mr. Pratt bore a burden to produce some evidence establishing that a factual basis exists for finding his permanent impairment level exceeded the 12% threshold, and for finding permanent impairment from the 2004 and 2007

[4] *Compare Jensen*, Me. W.C.B. No. 17-26, ¶ 22 (determining that evidence of a 5% permanent impairment rating due to physical injury coupled with evidence regarding a psychological sequela—but no medical evidence regarding a percentage of impairment from that sequela—did not meet the burden of production, therefore burden did not shift back to the employer) *with Sapranova v. Marriott Hotels,* Me. W.C.B. No. 19-33, ¶ 16 (App. Div. 2019) (holding that a doctor's opinion that the employee suffered 17.5% permanent impairment *was* sufficient to meet employee's burden of production, despite the doctor later contradicting that opinion, thus shifting burden to the employer).

injuries should be stacked onto impairment from the 2011 injury pursuant to section 213(1-A)(B)(1). *See Bisco v. S.D. Warren Co.*, 2006 ME 117, ¶ 12, 908 A.2d 625. If that burden was met, S.D. Warren bore the ultimate burden of establishing Mr. Pratt's permanent impairment level does not exceed the 12% threshold.

3. *Res judicata*

[¶17] Valid and final decisions of the Workers' Compensation Board, like court decisions, are subject to the general rules of *res judicata* and issue preclusion, not merely with respect to the decision's ultimate result, but with respect to all factual findings and legal conclusions that form the basis of that decision. *Bailey v. City of Lewiston*, 2017 ME 160, ¶ 10, 168 A.3d 762; *Grubb v. S.D. Warren Co.*, 2003 ME 139, ¶ 9, 837 A.2d 117. "*Res judicata* is grounded in concerns for judicial economy and efficiency, the stability of final judgments, and fairness to litigants." *See Lewis v. Me. Coast Artists*, 2001 ME 75, ¶ 9, 770 A.2d 644 (quotation marks omitted). Pursuant to the doctrine, a party is precluded from relitigating an issue when (1) the issue has been actually litigated, (2) determined by a final and valid judgment, and (3) the determination was essential to the judgment. *Cline v. Me. Coast Nordic*, 1999 ME 72, ¶ 9, 728 A.2d 686.

4. Analysis

[¶18] S.D. Warren introduced a whole-body permanent impairment assessment by Dr. Bamberger, who performed an evaluation pursuant to 39-A

M.R.S.A. § 312, of 10% attributable to Mr. Pratt's 2011 back injury.[5] Dr. Bamberger's assessment dealt solely with Mr. Pratt's back condition.

[¶19] Mr. Pratt introduced an assessment of his permanent impairment performed by Dr. Pavlak indicating he had sustained 12% permanent impairment attributable to the back injury and an additional 2% each for his two, work-related shoulder injuries, for a total of 16%. At his deposition, Dr. Bamberger confirmed he did not evaluate Mr. Pratt's shoulders but indicated that Dr. Pavlak's assessments were reasonable.

[¶20] S.D. Warren asserts it was error to combine the permanent impairment from the shoulder injuries with permanent impairment from the back injury to meet the burden of production because the 2012 decree established Mr. Pratt sustained no incapacity on account of the shoulder injuries and he did not establish in the current litigation his medical circumstances with respect to the shoulders have changed.

[¶21] Under the Workers' Compensation Act, permanent impairment and incapacity are related concepts. However, claims as to whether an injured worker has sustained permanent impairment or incapacity raise different issues and proof of each would require a different factual predicate. Incapacity benefits are "based on the difference between the employee's pre-injury wage and post-injury earning

[5] Title 39-A M.R.S.A. § 312(7) requires the board to "adopt the medical findings of the independent medical examiner unless there is clear and convincing evidence to the contrary in the record that does not support the medical findings."

capacity." *Bailey*, 2017 ME 160, ¶ 13 (quoting *Morse v. Fleet Fin. Grp.*, 2001 ME 142, ¶ 5, 782 A.2d 769); *see* also 39-A M.R.S.A. §§ 211-213. "Permanent impairment" is defined in the Act as "any anatomic or functional abnormality or loss existing after the date of maximum medical improvement that results from the injury." 39-A M.R.S.A. § 102(16). Although it is considered "a rough measure of an employee's overall level of work-incapacity," permanent impairment is relevant under the Act only "when determining the length of time that an employee suffering partial incapacity is entitled to receive workers' compensation benefits," *Sprague v. Lucas Tree Experts*, 2008 ME 162, ¶ 8, 957 A.2d 969. The permanent impairment threshold in section 213 "reflects a legislative intent to preserve longer-term benefits for those employees with the most severe disabilities." *Churchill v. Cent. Aroostook Ass'n for Retarded Citizens, Inc.*, 1999 ME 192, ¶ 12, 742 A.2d 475, 478.

[¶22] The hearing officer determined in 2012 there was "no persuasive medical evidence linking [Mr. Pratt's shoulder] injuries to his current incapacity." The hearing officer also found, however, Mr. Pratt had undergone surgery on both shoulders and was subject to permanent restrictions for the right shoulder injury. Thus, the hearing officer's determination in 2012 relates to Mr. Pratt's ability to earn rather than any anatomic or functional abnormality that might indicate the severity of the injury and result in extended benefits due to permanent impairment. Permanent impairment related to the shoulders was neither litigated nor essential to

the judgment in 2012, thus *res judicata* does not apply and Mr. Pratt was not required to prove changed circumstances at this stage.

[¶23] The 2012 decree establishes the prior shoulder injuries arose out of and in the course of employment for which a report of injury was completed pursuant to section 303 and Mr. Pratt received a benefit under the Act in the form of protection of the Act. Mr. Pratt testified he continues to suffer back pain and that his shoulder condition had worsened somewhat since the 2012 decree. He described difficulty in performing repetitive and overhead work. He underwent surgery and lost time with respect to each shoulder injury, for which S.D. Warren voluntarily paid benefits prior to the 2012 decree. Records from his chiropractors demonstrate he has continued to treat for his shoulder problems, and he remains on permanent restrictions related to his shoulders, including working above chest level with weights over 25 pounds. Dr. Bamberger assessed 10% permanent impairment due to the back injury, and Dr. Pavlak, an additional 4% due to the shoulder injuries. This evidence is sufficient to raise a genuine issue on whether the permanent impairment from his three injuries should be stacked pursuant to section 213(1-A)(B). *See Bisco*, 2006 ME 117, ¶ 12, 908 A.2d 625.

[¶24] Accordingly, the ALJ did not err in shifting the burden to S.D. Warren to persuade the ALJ that Mr. Pratt's permanent impairment level fell below the threshold. And, based on the medical evidence that Mr. Pratt had sustained 14%

permanent impairment, it was within the ALJ's purview to conclude that S.D. Warren did not meet its ultimate burden of persuasion that Mr. Pratt's permanent impairment fell below the threshold, and to disallow termination of benefits.

C. Petitions Required to Generate Issue

[¶25] S.D. Warren also argues to generate the issue of permanent impairment associated with the shoulder injuries, it was incumbent on Mr. Pratt to file separate petitions on those injuries. In so arguing, S.D. Warren relies on *Oleson v. International Paper*, Me. W.C.B. No. 14-29, ¶¶ 21-22 (App. Div. 2014), in which the Appellate Division declined to give *res judicata* effect to a decree referencing a specific date of injury, to subsequent petitions filed on other dates of injury. This argument lacks merit.

[¶26] The statutory provision that applies in the pending dispute, 39-A M.R.S.A. § 213(1-A)(B), expressly states permanent impairment includes permanent impairment from "the work injury at issue in the determination and . . . [a]ny prior injury that that arose out of and in the course of employment." The plain language specifically references permanent impairment associated with work injuries separate from the injury at issue in the overall assessment of permanent impairment and establishes there is no requirement to bring separate petitions to determine the permanent impairment for the shoulder injuries.

D. Coordination of Benefits

[¶27] The ALJ concluded S.D. Warren is not entitled to offset any increase in benefits due to cost-of-living increases but is entitled to offset the increases in his base benefit due to the deferral. S.D. Warren challenges the ALJ's determination in two respects: arguing it is entitled to offset 50% of Mr. Pratt's entire old-age social security benefit (1) by operation of 39-A M.R.S.A. § 221 and (2) as a matter of *res judicata* or law of the case, based on the language of the 2017 decree.

1. Title 39-A M.R.S.A. § 221

[¶28] Mr. Pratt received old-age social security benefits in 2015 for two months. S.D. Warren coordinated his workers' compensation benefits with those benefits for one of those months, pursuant to 39-A M.R.S.A. § 221(1)(A). Between 2015 and 2019, when Mr. Pratt resumed receipt of his old-age social security benefits, the benefit amount had increased due to cost-of-living adjustments and Mr. Pratt's deferral to age 70. In the current litigation, S.D. Warren argued it was entitled to offset an amount based on Mr. Pratt's full social security benefit, including the cost-of-living increases.

[¶29] The ALJ found as fact coordination of benefits first occurred in 2015 when S.D. Warren took an offset and determined pursuant to the plain language of section 221(3)(B), any cost-of-living increases in the social security benefit occurring thereafter could not be coordinated. Section 221(3)(B) provides: "A credit

or reduction under this section may not occur because of an increase granted by the Social Security Administration as a cost-of-living adjustment granted after the benefits are coordinated."

[¶30] S.D. Warren contends the ALJ's interpretation of the statute is erroneous, and section 221(B)(3) does not require exclusion of cost-of-living increases for any period in which no social security benefits were being received. S.D. Warren further suggests allowing exclusion of those increases results in an absurd outcome essentially allowing the employee to freeze an offset by receiving one month of old-age social security benefits and then deferring those benefits for several years.

[¶31] S.D. Warren, however, points to no specific language in the statute to support its interpretation. As determined by the ALJ, the unambiguous, plain language of section 221(B)(3) provides no reduction should occur based on a cost-of-living increase after coordination. The ALJ found as fact, supported by competent evidence in the record, coordination occurred in 2015 when S.D. Warren took its first offset. Nothing in the statutory scheme related to coordination of benefits appears to contradict this reading of paragraph B. Accordingly, the ALJ did not err in construing the statute to exclude the cost-of-living adjustments from coordination.

2. *Res judicata* and Law of the Case

[¶32] As part of the 2017 decree, the ALJ determined S.D. Warren was not entitled to reduce benefits based on Mr. Pratt's failure to collect social security benefits at age 66. The ALJ found Mr. Pratt complied with his obligation to apply for social security benefits and executed the appropriate release. However, she found Mr. Pratt had no concomitant obligation to receive those benefits, and his election to defer receipt was not inconsistent with the Social Security Act nor did it violate section 221(4). In so finding, the ALJ determined S.D. Warren "retain[ed] its right to offset 50% of the social security benefit ultimately received" and commented "I further conclude that the employer will enjoy a larger offset in this circumstance, commensurate with the increased social security benefit that Mr. Pratt will receive as a result of electing to defer."

[¶33] S.D. Warren argues based on the *res judicata* effect of the 2017 decree, it is entitled to offset 50% of the social security benefits ultimately received, which would include both the cost-of-living increases and the increase in the base benefit due to deferral. Alternatively, S.D. Warren argues its entitlement to offset is established by law of the case.

[¶34] *Res judicata*, as discussed above, bars re-litigation of essential issues actually litigated and determined by a final judgment. *Cline*, 1999 ME 72, ¶ 9, 728 A.2d 686. The "law of the case" doctrine is "an articulation of the wise policy that a

judge should not in the same case overrule or reconsider the decision of another judge of coordinate jurisdiction." *Blance v. Alley*, 404 A.2d 587, 589 (Me. 1979). It expresses "the practice of courts generally to refuse to reopen what has been decided[.]" *Id.* (quotation marks omitted). The doctrine relates only to questions of law, and it operates only in subsequent proceedings in the same case. *Id.*

[¶35] We do not construe the language of the 2017 decree as supporting S.D. Warren's arguments regarding *res judicata* or law of the case. The amount by which S.D. Warren is entitled to reduce benefits under section 221 was not adjudicated as part of the 2017 decree. The issue in that round of litigation was whether S.D. Warren was entitled to discontinue benefits based on Mr. Pratt's decision to defer receipt of his social security benefits. Moreover, the ALJ did not confer on S.D. Warren any greater right than it already had. This is evident in her use of the word "retain." Further, the ALJ specifically references an increase in benefits due to Mr. Pratt's election of deferral but is silent on any increase due to cost-of-living. Under these circumstances, the ALJ's passing reference to a 50% offset of benefits is not binding on the issue whether the cost-of-living adjustments should be included in the offset amount.

[¶36] In the 2017 decision on appeal, the Appellate Division indicated "[w]hen Mr. Pratt begins receiving social security retirement benefits, S.D. Warren will be entitled to coordinate those benefits with any incapacity benefits being paid,

consistent with section 221(3)." *Pratt,* No. 19-13, ¶ 10. The Appellate Division, therefore, tied the coordination of benefits directly to the language set out in the Act. It is the Appellate Division's decision, not the ALJ's decision, that serves as the law of the case. *Blance*, 404 A.2d at 589. The ALJ's decision in the current litigation is consistent with the law of the case as established in the 2017 Appellate Division decision.

E. Calculation of Offset

[¶37] The ALJ calculated the offset to which S.D. Warren is entitled at 50% of $3158.63 per month, or $364.46 per week. Referencing the social security document, "Your Benefit: How It's Calculated," the ALJ concluded Mr. Pratt's old-age social security benefit received in 2019 at age 70, due to the deferral alone, amounted to 132% of the benefit Mr. Pratt received at age 66.

[¶38] S.D. Warren argues even if it is only entitled to a credit for the increase related to the deferral, the ALJ calculated the amount incorrectly. It contends the ALJ should have determined the proposed offset amount by determining the cumulative cost-of-living increase (using a social security cost-of-living adjustments publication) then subtracting that figure from the benefit ultimately received at age 70, with the difference resulting from the deferral only. This method, based on a monthly social security benefit of $3182.17, would yield a weekly offset of $367.70.

[¶39] Section 221 is silent on how to calculate the base amount from which the offset should be taken in this situation, and the board has not promulgated rules that address it. Accordingly, we look to the statutory scheme as a whole and the intent of the Legislature and determine whether the method used by the ALJ to calculate the offset amount was consistent with that intent. *See Foley v. Verizon*, 2007 ME 128, ¶ 10, 931 A.2d 1058. The Law Court has identified the Legislature's intent in enacting section 221 as "to ensure a minimum income during the period of an employee's incapacity and to prevent a double recovery of both retirement and compensation benefits," as well as to reduce premiums and prevent stacking of benefits. *Id.* ¶ 11 (quotation marks omitted).

[¶40] The method chosen by the ALJ is a practical approach that meets the overall purpose of the coordination of benefits provision, is not otherwise prohibited by statute or rule, refers to Social Security Administration publications and rules, and has the benefit of ease of administration. Accordingly, we find no reversible error in the use of that method. *See id.* ¶ 16.

III. CONCLUSION

[¶41] The ALJ did not err in determining Mr. Pratt met his burden of production on the issue whether his permanent impairment level exceeded the threshold, and neither misconceived nor misapplied the law in determining S.D. Warren did not meet its ultimate burden to prove Mr. Pratt's permanent impairment

level fell below the threshold. The doctrine of *res judicata* did not apply to require proof of changed circumstances regarding Mr. Pratt's shoulder condition to meet his burden of production, nor did that doctrine (nor the law of the case doctrine) require the ALJ to conclude S.D. Warren was entitled to an offset in the amount of 50% of Mr. Pratt's full social security benefit received at age 70. Moreover, in these circumstances, section 221 authorized offsetting 50% of an amount that does not include cost-of-living adjustments. Finally, the ALJ did not err in calculating the amount to be offset.

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.

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