ARTHUR E. HASKELL
(Appellant)
v.

KATAHDIN PAPER CO., LLC,
(Appellee)

AND

SEDGWICK CLAIMS MANAGEMENT SERVICES, INC.
(Insurer)

Decided: April 3, 2013
Conferenced: February 26, 2013

PANEL MEMBERS: Hearing Officers Collier, Elwin, and Goodnough
BY: Hearing Officer Collier

[¶1] Arthur E. Haskell appeals from a decision of a Workers' Compensation Board hearing officer (*Pelletier, HO*) denying his Petitions for Award and for Medical and Related Services on the basis that the alleged injury did not arise out of his employment at Katahdin Paper, pursuant to 39-A M.R.S.A. § 201 (2001). Mr. Haskell contends that the hearing officer erred as a matter of law when he concluded that the facts did not establish legal causation. As a preliminary matter, Katahdin Paper asserts that the Appellate Division lacks jurisdiction to entertain the appeal. For the reasons that follow, we determine that the Appellate Division has jurisdiction over this appeal, and that Mr. Haskell's injury is compensable.

Accordingly, we vacate the hearing officer's decision and grant the Petitions for Award and for Payment of Medical and Related Services.

I. BACKGROUND

[¶2] Arthur Haskell worked in the paper mill in East Millinocket for 32 years as a millwright, pipefitter, and machinist. In 2010 he was working in the maintenance department, mainly tearing down and repairing large pumps. Mr. Haskell had an asymptomatic, preexisting degenerative disc condition in his cervical spine which, according to the independent medical examiner appointed pursuant to 39-A M.R.S.A. § 312 (Supp. 2012), "caused right side foraminal narrowing at C5-6 and C6-7." This condition became symptomatic while he was at work on February 16, 2010. The hearing officer found the following facts related to the onset of symptoms, which are supported in the record:

> On February 16, 2010 employee was working on a pump at chest level. The pump was attached by a chain to an electric powered hoist which maneuvered the 300 pound object by means of a crane. His right arm was resting on the chain, and his left arm was at the controls of the hoist. He was not bearing any weight in either hand. While in this posture, he was startled by a "loud bang" from the "mezzanine level" above where others were working. The noise caused him to turn his head abruptly to the right and look up. Employee testified that this sudden movement of his head caused immediate pain in his neck, which radiated into his right arm causing numbness and tingling all the way to his fingers.

The hearing officer also found, based on the independent medical examiner's report, that Mr. Haskell's preexisting condition made him "very prone" to the

"minor injury" he experienced at work. He was treated with epidural steroid injections that alleviated his pain, and he lost no time from work.

[¶3] Mr. Haskell filed Petitions for Award and for Payment of Medical and Related Services. The hearing officer concluded that although the injury arose "in the course of" employment, it did not arise "out of" the employment, and he denied both petitions. Mr. Haskell filed a motion for additional findings of fact and conclusions of law, which the hearing officer denied in a decision dated August 31, 2012.

II. DISCUSSION

A. The Appellate Division's Jurisdiction

[¶4] Katahdin Paper challenges the jurisdiction of the Appellate Division in this case due to the timing of the hearing officer's decision and the effective date of the statutory amendment that revived the Appellate Division, P.L. 2011, ch. 647, § 20 (codified at 39-A M.R.S.A. §§ 321-A, 321-B (Supp. 2012) (effective Aug. 30, 2012)). The hearing officer's decision on the motion for additional findings of fact and conclusions of law was issued on August 31, 2012. The employer argues that the Appellate Division lacks jurisdiction based on the Advisory Note to the Court's amendment to Appellate Rule 23, which states that both P.L. 2011, ch. 647, § 20 and the amendment to Rule 23 became effective as of September 1, 2012. M.R. App. P. 23 advisory note, Sept. 1, 2012. In fact, "P.L. 2011, ch. 647,

which amended the Maine Workers' Compensation Act of 1992 in a variety of ways. . . . became effective August 30, 2012, the general effective date for the second regular session of the 125th Legislature." *Estate of Gregory Sullwold v. The Salvation Army*, 2013 ME 28, ¶ 5, --- A.3d---.[1]

[¶5] Because the hearing officer's decision was issued after the effective date of the statutory amendment enacting the Appellate Division, we conclude that we have jurisdiction over this appeal.

B. Arising out of the Employment

1. Standard of Review

[¶6] The Appellate Division accords deference to hearing officer decisions addressing whether an injury is compensable under the Act. *See Cox v. Coastal Prods. Co., Inc*., 2001 ME 100, ¶ 12, 774 A.2d 347, *Moore v. Pratt & Whitney Aircraft*, 669 A.2d 156, 158 (Me. 1995). The hearing officer's findings of fact are not subject to appeal. 39-A M.R.S.A. § 321-B(2) (Supp. 2012). "[O]ur role on appeal is limited to assuring that the [hearing officer's] . . . decision involved no misconception of applicable law and that the application of the law to the facts was

[1] The Maine Constitution provides that legislation becomes effective "90 days after the recess of the session of the Legislature in which it was passed, unless in case of emergency[.]" Me. Const. art. IV, pt. 3, § 16. The 125th Legislature concluded the session May 31, 2012. Legis. Record H-1604 (2d Reg. Sess. 2011). Thus, the amendment creating the Appellate Division became effective on August 30, 2012. *See Laws of the State of Maine,* cover page (2012).

neither arbitrary nor without rational foundation." *Moore*, 669 A.2d at 158 (quotation marks omitted).

[¶7] When a party requests and proposes additional findings of fact and conclusions of law, as in this case, "we review only the factual findings actually made and the legal standards actually applied by the hearing officer." *Daley v. Spinnaker Inds., Inc*., 2002 ME 134, ¶ 17, 803 A.2d 446 (quotation marks omitted).

2. Arising out of Employment

[¶8] Mr. Haskell contends that the hearing officer misapplied the law to the facts when determining that the injury did not arise out of his employment at Katahdin Paper. Because the case involves an alleged work injury combined with a preexisting medical condition, compensability is determined pursuant to 39-A M.R.S.A. § 201(4) (2001). *McAdam v. United Parcel Serv.*, 2001 ME 4, ¶ 11, 763 A.2d 1173. Section 201(4) states:

> If a work-related injury aggravates, accelerates or combines with a preexisting physical condition, any resulting disability is compensable only if contributed to by the employment in a significant manner.

39-A M.R.S.A. § 201(4). "When a case appears to come within section 201(4), the hearing officer must first determine whether the employee has suffered a work-related injury . . . then [section] 201(4) is applied if the employee has a condition

that preceded the injury."[2] *Celentano v. Dep't of Corr.*, 2005 ME 125, ¶ 9, 887 A.2d 512 (quotation marks omitted).

[¶9] A work-related injury is one that "arise[s] out of and in the course of employment." 39-A M.R.S.A. § 201. There is no dispute in this case that Mr. Haskell's injury arose *in the course of* employment. The issue is whether the injury arose *out of* the employment. "[T]he term 'arising out of' employment means that there must be some causal connection between the conditions under which the employee worked and the injury, or that the injury, in some proximate way, had its origin, its source, or its cause in the employment." *Standring v. Town of Skowhegan*, 2005 ME 51, ¶ 10, 870 A.2d 128; *see also Comeau v. Maine Coastal Services*, 449 A.2d 362, 366 (Me. 1982).

[¶10] Incapacity "that is shown to result from the combined effects of work-related activity and a preexisting condition" is compensable only when the incapacity "results from some sufficient causal relationship to the conditions under which the employee works." *Bryant v. Masters Machine Co.*, 444 A.2d 329, 335, 337 (Me. 1982). In a combined effects case, the "arising out of and in the course of employment" requirement is satisfied by showing both medical and legal cause. *Id*. at 336.

[2] This case turns solely on whether the injury is work-related. The hearing officer concluded that if it were established that Mr. Haskell suffered a work-related injury, he would be entitled to compensation pursuant to section 201(4) because there was no dispute that the employment made a significant contribution the disability. *See* 39-A M.R.S.A. § 201(4); *see also Celentano v. Dep't of Corr.*, 2005 ME 125, ¶ 15, 887 A.2d 512. Katahdin Paper does not challenge this conclusion on appeal.

[¶11] Mr. Haskell established medical causation, and that is not at issue on appeal. With regard to legal cause, "where the employee bears with him some 'personal' element of risk because of a preexisting condition, the employment must be shown to contribute some substantial element to increase the risk, thus offsetting the personal risk which the employee brings to the employment environment." *Id*. at 337. The comparison of the employment to personal risk is made against an objective standard; thus, a hearing officer should compare the risk that arises out of the conditions of employment and the risk present in an average person's non-employment life. *Id*. The Law Court has characterized the element of legal causation as distinguishing "situations in which the employee just happened to be at work when the disability arose from those where the disability occurred only because an employment condition increased the risk of disability above the risks that the employee faced in everyday life." *Celentano*, 2005 ME 125, ¶ 12, 887 A.2d at 515.

[¶12] In *Bryant*, the employee was operating a drill press while sitting on a stool, when another employee accidentally kicked the stool out from under him. *Id*. at 331. The fall triggered symptoms of a previously asymptomatic back condition. *Id*. at 333. The Law Court vacated the decision denying compensation, determining that the injury was compensable because the conditions of employment—performing work while sitting on a stool while other employees moved around in

the environment—increased the risk that the employee would fall. *Id*. at 342-43. *See also Celantano*, 2005 ME 125, ¶ 14, 887 A.2d 512 (affirming determination that legal cause had been established when employee's trip over a table leg lit up a preexisting asymptomatic knee condition based on description of the table leg and the fact that another employee had tripped over the table leg); *cf. Barrett v. Herbert Eng'g, Inc*., 371 A.2d 633, 636 (1977) (affirming denial of benefits to employee who, while walking to pick up tools at work, suddenly experienced severe low back pain).

[¶13] The hearing officer in this case determined that Mr. Haskell's injury did not arise out of his employment because the hearing officer could not conclude that "the risk of injury posed by abruptly turning one's head in response to noise caused by nearby co-workers constitutes a substantial element of increased risk sufficient to offset the personal risk that Mr. Haskell brought with him to the work place on account of his preexisting condition." He explained:

> There is no question that the environment in which Mr. Haskell worked is noisier than the environment in normal, non-employment life. Indeed, he testified that there is a level of background noise at all times such that ear plugs are almost required. However, employee was startled not by the customary ambient noise, but by an unexpected noise, a "loud bang", emanating from the mezzanine level above him. This is not unlike being startled on the street by a siren, a vehicle theft alarm, or the "back fire" of an engine, or at home by an object falling to the floor, or the slamming of the front door. Had employee's spine been loaded with the weight of the pump, or had he been in an awkward posture owing to the work he was doing when the noise startled him, this would be a very different case. However, Dr.

> Bradford specifically noted as pertinent history that the work employee was doing was "in and of itself not problematic." IME report at 4.

[¶14] Mr. Haskell contends that the hearing officer erred because the injury occurred as a result of his reacting to a loud noise while he was in an industrial work environment, and the potential danger from a loud noise in that industrial setting is inherently greater than any danger from a similar noise that might occur in everyday life. Mr. Haskell asserts that the twist of his neck toward the loud noise was a rational, self-protective action in the environment of a paper mill where safety is a prominent concern.

[¶15] The hearing officer's decision accurately states the law as it applies to legal causation. The issue is whether the facts as found objectively indicate that the conditions of employment elevated the risk of injury above that existing in everyday life. Although the hearing officer found that the work that Mr. Haskell was doing was not in and of itself problematic—that is, his spine was not loaded with the weight of the pump and he was not in an awkward posture at the time the loud noise occurred—he also found that Mr. Haskell was (1) working on a 300 pound pump that was suspended at chest level by a chain connected to an electric hoist that maneuvered the pump on a crane; (2) his right arm was resting on the chain and his left arm was at the controls of the hoist; (3) the "loud bang" came

from the mezzanine level above where he was working; and (4) other employees were working above him on the mezzanine level.

III. CONCLUSION

[¶16] Limiting our review to the facts as found, we conclude that the hearing officer misapplied the law when determining that the conditions of Mr. Haskell's employment did not elevate the risk of injury above that of everyday life. There were two ways in which the risk of this injury was elevated: both the likelihood and the context of the startling noise. First, while sudden, loud noises are heard in everyday non-employment life, they are more likely to occur in an operating paper mill. Second, and more significantly, with people working on the mezzanine level above him, a 300-pound pump suspended on a chain before him attached to a hoist he was controlling, and heavy equipment operating nearby, the conditions of employment in the mill presented an increased risk that such a noise signaled impending danger. This, in turn, warranted the self-protective physical response that triggered Mr. Haskell's symptoms. Mr. Haskell likely responded with more urgency than he might have if he had heard a similar noise while sitting at home or walking down the street. *See Bryant*, 444 A.2d at 342-43 (the risk of injury from falling off a stool was greater in this employment environment than in everyday life). Because these are risks attributable to Mr. Haskell's employment, they establish legal causation. Accordingly, we conclude that the event

precipitating the onset of symptoms (turning his head abruptly in response to the loud noise) resulted from an elevated risk of injury attributable to the employee's work activity, and thus constitutes a legal cause of the injury.

The entry is:

> The hearing officer's decision is vacated, and the Petitions for Award and for Payment of Medical and Related Services are hereby granted. The employee is awarded the protection of the Act, and the case is remanded for entry of an order for payment of medical and related services.

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. 2012).

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