WYDENIA CAMPBELL
(Appellee)

v.

SKILLS, INC.
(Appellant)

and

CROSS INSURANCE
(Insurer)

Conference held: January 29, 2015
Decided: April 25, 2016

PANEL MEMBERS: Administrative Law Judges[1] Stovall, Jerome, and Pelletier
BY: Administrative Law Judge Stovall

[¶1] Skills, Inc., appeals from a decision of a Workers' Compensation Board administrative law judge (*Elwin, ALJ*) granting Wydenia Campbell's Petition for Award of Compensation. Skills, Inc. contends that the administrative law judge (ALJ) misapplied the law in determining that the injury suffered by Ms. Campbell arose out of and in the course of her employment. We disagree, and affirm the ALJ's decision.

## I. BACKGROUND

[¶2] Wydenia Campbell worked for Skills, Inc., helping disabled clients with activities of daily living at two of the company's group homes in Canaan and

[1] Pursuant to P.L. 2015, ch. 297 (effective October 15, 2015) Workers' Compensation Board hearing officers are now designated administrative law judges.

Hartland. On December 18, 2012, Ms. Campbell attended a mandatory CRMA recertification course at OHI Professional Development's facility in Brewer. Skills' policy on trainings provided that trainings are "considered part of [the employees'] work schedule." In the notice sent to participants about the training, Skills included the following warning in bold type: "Since this course is considered an 'essential function' of your position, failure to successfully complete this course could possibly result in termination."

[¶3] The training ran from 8:30 a.m. to 5:00 p.m., with a break for lunch. The employees were paid for 10.5 hours, which included one hour travel time each way and 8.5 hours at the OHI facility (or more if the class time was extended). The participants were thus paid for their entire time while at the training facility, including lunch and breaks.

[¶4] In addition to a half-hour lunch break, the OHI instructor allowed the class to take two shorter breaks, one in the morning and one in the afternoon. The instructor told participants who wanted to smoke to go to a certain area of the sidewalk, as OHI did not allow smoking at any other location on its property, including while inside personal vehicles. At the time of the injury, Skills' smoking policy allowed its employees to smoke as long as they were "in the area each program has designated as the smoking area." During the afternoon break, Ms.

Campbell walked down to the designated sidewalk to smoke. While she was standing on the sidewalk, a car jumped the curb and struck her and a coworker.

[¶5] Following a hearing, the ALJ granted Ms. Campbell's Petition for Award on February 27, 2014. Skills was ordered to pay Ms. Campbell total incapacity benefits for a closed-end period, followed by a period of partial incapacity benefits. Skills filed a Motion for Further Findings of Fact and Conclusions of Law. The ALJ issued further findings but did not alter the outcome. Skills then filed this timely appeal.

## II. DISCUSSION

### A. Standard of Review

[¶6] The role of the Appellate Division on appeal "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). Appeals from administrative law judges' decisions are governed by 39-A M.R.S.A. §§ 321-B, 322 (Supp. 2015). Section 321-B (2) provides that "[a] finding of fact by an [administrative law judge] is not subject to appeal under this section."

B. Arising Out of and In the Course of Employment

[¶7] The issue in this case is whether the ALJ erred when determining that Ms. Campbell's injury was compensable. In order to be compensable, an injury must "aris[e] out of and in the course of employment." 39-A M.R.S.A. § 201(1) (2001). The purpose of this requirement is "to compensate employees for injuries suffered *while* and *because* they were at work." *Comeau v. Me. Coastal Servcs.*, 449 A.2d 362, 365 (Me. 1982) (quoting *Bryant v. Masters Machine Co.*, 444 A.2d 329, 333 (Me. 1982)).

[¶8] "An injury arises out of and in the course of employment when there is a sufficient connection between the injury and the employment." *Celentano v. Dep't of Corrections*, 2005 ME 125, ¶ 9, 887 A.2d 512 (citing *Comeau*, 449 A.2d at 366-67). An injury occurs "in the course of employment when it occurs within the period of employment at a place where the employee reasonably may be in the performance of his duties and while he is fulfilling those duties or engaged in something incidental thereto." *Comeau*, 449 A.2d at 365 (quoting *Fournier's Case*, 120 Me. 236, 240, 113 A. 270, 272 (1921)); *see also* 2 Arthur Larson & Lex K. Larson, *Larson's Workers' Compensation Law*, § 12 at 2-12 (2012). An injury "arises out of" employment when there is "some causal connection between the conditions under which the employee worked and the injury which arose, or that the injury, in some proximate way, had its origin, its source, its cause in the

employment." *Comeau*, 449 A.2d at 365 (quoting *Barrett v. Herbert Engineering, Inc.*, 371 A.2d 633, 636 (Me. 1977)).

[¶9] The ALJ determined that the injury arose out of and in the course of employment on two grounds. First, she determined that Ms. Campbell was a "traveling employee," and therefore not subject to the general rule that injuries occurring while the employee is "outside the business premises and not engaged in any work-related activity" do not arise out of and in the course of employment. *See Waycott v. Beneficial Corp.*, 400 A.2d 392, 394 (Me. 1979) (referring to the "public street" or "going and coming rule"). Second, she applied the factors that the Law Court has listed for consideration when determining whether an injury that is not plainly compensable arises out of and in the course of employment. *See Comeau*, 449 A.2d at 365. Skills contends the ALJ erred in both respects.

[¶10] Skills disputes the finding that Ms. Campbell was a "traveling employee." *See Boyce v. Potter*, 642 A.2d 1342, 1343 (Me. 1994). We find that we do not need to reach that issue since the ALJ's analysis under *Comeau v. Maine Coastal Services* 449 A.2d 362 (Me. 1982) is appropriate under the facts of this case. In *Comeau v. Maine Coastal Services*, the Law Court compiled a number of nonexclusive considerations to be examined in determining whether a particular injury arises out of and in the course of employment "when the fact pattern does

not fall snugly within the arising out of and in the course of requirement." 449 A.2d at 366. Those factors are:

> (1) Whether at the time of the injury the employee was promoting an interest of the employer, or the activity of the employee directly or indirectly benefited the employer.
> (2) Whether the activities of the employee work to the benefit or accommodate the needs of the employer.
> (3) Whether the activities were within the terms, conditions or customs of the employment, or acquiesced in or permitted by the employer.
> (4) Whether the activity of the employee serves both a business and personal purpose, or represents an insubstantial deviation from the employment.
> (5) Whether the hazard or causative condition can be viewed as employer or employee created.
> (6) Whether the actions of the employee were unreasonably reckless or created excessive risks or perils.
> (7) Whether the activities of the employee incidental to the employment were prohibited by the employer either expressly or implicitly.
> (8) Whether the injury occurred on the premises of the employer.

*Id.* (citations omitted).

[¶11] Skills contends that the ALJ erred when determining that the factors were met. It argues that Ms. Campbell was not promoting the employer's interests at the time of the injury; that smoking neither benefited nor accommodated the employer's needs; that the activity served only a personal purpose; and that Ms. Campbell was not on the employer's premises when she was injured.

[¶12] However, we give significant deference to an ALJ's application of the *Comeau* factors. *See Fournier v. Aetna, Inc.*, 2006 ME 71, ¶ 18, 899 A.2d 787. The

[administrative law judge] "need not reach the 'correct' conclusion, but a conclusion that is 'neither arbitrary nor without rational foundation." *Id*. The ALJ in this case considered the factors listed in *Comeau*, including that (1) Skills' interest was promoted by making sure its employees were qualified to perform their duties and it threatened termination of its employees if they did not attend the off-site training; (2) attending this training accommodated the needs of Skills by making sure its employees were qualified; (3) the smoke break was permitted by Skills and Ms. Campbell was in an area designated by her employer; (4) the brief break was not a substantial deviation from employment; (5) the hazard was not created by Skills or Ms. Campbell; (6) Ms. Campbell was not behaving recklessly; (7) the brief break was incidental to her employment; and (8) although the injury did not occur on Skills' premises, it occurred in a location where her employer required her to be.

[¶13] The ALJ gave due consideration to the *Comeau* factors, and reached the conclusion that the injury arose out of and in the course of employment. We cannot say that the decision misconceives the law, is arbitrary or lacks a rational foundation.

## IV. CONCLUSION

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 (Supp. 2015).

Attorney for Appellant:
Joshua Birocco, Esq.
TUCKER LAW GROUP
P.O. Box 696
Bangor, ME 04402

Attorney for Appellee:
Michael Welch, Esq.
HARDY WOLF & DOWNING, P.A.
P.O. Box 3065
Lewiston, ME 04243