

DUSTIN PICKERING
(Appellee)

v.

STATE OF MAINE,
DEPARTMENT OF CONSERVATION
(Appellant)

Argument held: January 26, 2017
Decided: March 21, 2017

PANEL MEMBERS: Administrative Law Judges Goodnough, Pelletier, and Stovall

BY: Administrative Law Judge Stovall

[¶1] State of Maine, Department of Conservation appeals from a decision of a Workers' Compensation Board administrative law judge (*Hirtle, ALJ*), granting Dustin Pickering's Petition for Payment of Medical and Related Services for treatment for Lyme disease. The Department contends that the ALJ committed legal error in concluding that Mr. Pickering met his burden to prove that his Lyme disease arose out of and in the course of employment; i.e., that it was caused by exposure to Lyme-infested ticks while at work.¹ We find no error.

[¶2] The Department's challenge to whether Mr. Pickering met his burden of proof is reviewable as a question of law. 39-A M.R.S.A § 318 (Supp. 2016). As the moving party, Mr. Pickering had the burden to produce evidence sufficient to

¹ Because the ALJ's determination that Mr. Pickering suffers from Lyme disease is a finding of fact supported by competent evidence, despite the Department's contention, we do not review it on appeal. 39-A M.R.S.A § 321-B(2) (Supp. 2016)

show on a more probable than not basis that the injury arose out of and in the course of his employment. *See Ibbitson v. Sheridan Corp.*, 422 A.2d 1005, 1008 (Me. 1980). Determining whether an injury arises out of and occurs in the course of employment involves multiple considerations:

“[I]n the course of” employment relates to the time, place, and circumstances under which an injury occurs, the place where the employee reasonably may be in performance of the employee’s duties, and whether it occurred while fulfilling those duties or engaged in something incidental to those duties.... [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 (citations omitted).

[¶3] Mr. Pickering testified that while performing a two-day work assignment in May 2012 he noticed the presence of ticks in the area; he found two ticks crawling on his arm. Bill Hamilton, the chief forest ranger for the State, testified that ticks are more prevalent in the south-west portion of the state where Mr. Pickering was working. Both Mr. Pickering and Mr. Hamilton testified that the area of the state where Mr. Pickering lives has not yet been infiltrated by ticks to the extent they have been found in southern and western Maine. The ALJ also credited the testimony of Dr. Dubocq, who provided an un rebutted medical opinion that Mr. Pickering’s diagnosis was work-related.

[¶4] There is sufficient competent evidence in the record to support the ALJ's finding that his Lyme disease was work-related. The decision involved no misconception of applicable law, and 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).

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. 2016).

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