MICHAEL BAILEY
(Appellee)

v.

PEPSI BOTTLING GROUP
(Appellant)

and

SEDGWICK CLAIMS MANAGEMENT SERVICES, INC.
(Insurer)

Argued: February 7, 2019
Decided: June 16, 2020

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

[¶1] Pepsi Bottling Group (Pepsi) appeals a decision of a Workers' Compensation Board Administrative Law Judge (*Elwin, ALJ*) granting Michael Bailey's Petitions for Award of Compensation and for Payment of Medical and Related Services. Mr. Bailey sustained a broken leg and a back injury when he drove off the road and into a ditch while returning a company truck to a co-worker's premises, next door to his home. Pepsi contends that the injury is not compensable because it arose out of a personal risk unassociated with his job; that recovery should have been barred pursuant to the "going and coming" rule, *see Waycott v. Beneficial Corp.*, 400 A.2d 392, 394 (Me. 1979); and that the facts do not fit within the "dual

purpose" exception to the rule, *see Cox v. Coastal Prods. Co.*, 2001 ME 100, ¶ 10, 774 A. 2d 34. We affirm the decision.

I. BACKGROUND

[¶2] Michael Bailey and his father live next door to each other and are both employees of Pepsi. Mr. Bailey's father drives a company truck for Pepsi, and Mr. Bailey himself works at a fixed location as a mechanic, repairing and maintaining Pepsi's vehicles. He typically commutes to and from his workplace in his own vehicle.

[¶3] On March 14, 2016, Mr. Bailey's supervisor requested that he drive his father's company truck to work the next day to perform maintenance on it. Mr. Bailey complied with this request, leaving his personal vehicle at home on March 15. After working on the company vehicle for a few hours, Mr. Bailey told his supervisor that he was feeling sick and requested permission to leave early. The supervisor granted permission to leave and told Mr. Bailey to drop the truck off at his father's place on his way home. While driving to his father's house in the company vehicle, Mr. Bailey became ill. He continued on his way, but shortly thereafter drove off the road into a ditch and was injured. The accident occurred on the route he would ordinarily take to go home from work.

[¶4] Mr. Bailey filed Petitions for Award of Compensation and for Payment of Medical and Related Services. After a hearing, the ALJ determined that Mr.

Bailey's injuries arose out of and in the course of employment and are compensable under 39-A M.R.S.A. § 201(1) (Pamph. 2020).

[¶5] In response to Pepsi's Motion for Further Findings of Fact and Conclusions of Law, the ALJ elaborated on her rationale, but did not change the outcome. She considered and rejected the argument that the "going and coming rule" barred Mr. Bailey's claims. *See Waycott*, 400 A.2d at 394 (providing that injuries occurring while the employee is "merely on his way to or from his place of business," do not arise out of or in the course of employment). The ALJ determined that the circumstances of this case fit within the "dual purpose" exception to the going and coming rule, *see Cox v. Coastal Prods. Co.*, 2001 ME 100, ¶ 10, 774 A. 2d 34, and are compensable pursuant to *Comeau v. Maine Coastal Services*, 449 A.2d 362 (Me. 1982). Pepsi appeals.

II. DISCUSSION

[¶6] Because the facts in this case are not in dispute, our role is limited to assuring that the ALJ's decision "involved no misconception of applicable law, and that the application of the law to the facts was neither arbitrary or without rational foundation." *Moore v. Pratt and Whitney Aircraft*, 669 A. 2d 156, 158 (Me 1995).

A. The "Going and Coming" Rule and the "Dual Purpose" Exception

[¶7] Pepsi contends that Mr. Bailey's trip was no different from his daily commute from work, and his injuries are not the result of a work-related risk.

Therefore, the case falls within the "going and coming rule," and is excluded from the Act's coverage.

[¶8] The "going and coming" rule, also referred to as the "public streets rule," is a well-established workers' compensation principle providing "that an accident occurring off the employer's premises while an employee is merely on his way to or from his place of business is not, without more, compensable." *Waycott,* 400 A.2d at 394. When the going and coming rule is raised, an ALJ first analyzes whether the rule applies. *See Fournier v. Aetna, Inc*., 2006 ME 71, ¶ 14, 899 A.2d 787. If it does, then the ALJ determines whether the facts fit within an exception to the rule. *See Waycott,* 400 A.2d at 394-95. If the rule does not apply, or if the case fits within an exception to the rule, then the ALJ proceeds to determine whether the injury arises out of or in the course of employment. *Fournier*, 2006 ME 71, ¶ 14, 899 A.2d 787.

[¶9] The ALJ determined that although Mr. Bailey was on his way home from work, the facts fit within the "dual purpose" exception to the rule. This exception applies to a trip undertaken at the outset for both business and personal purposes and renders injuries suffered as the result of the travel compensable unless occurring "during an identifiable 'deviation' from the business trip." *Cox v. Coastal Prods. Co., Inc*., 2001 ME 100, ¶¶ 9-11, 774 A.2d 347; *Sargent v. Raymond F. Sargent, Inc.*, 295 A.2d 35, 41 (1972); *see also Fournier v. Aetna*, 2006 ME 71, ¶ 6 n.2, 899 A. 2d 787 (recognizing the dual purpose doctrine as an exception to the going and

coming rule). The dual purpose exception does not require that the business purpose be the dominant purpose of the trip, and "if the permission to take a personal trip is made conditional on the performance of a business errand, the trip becomes a business trip." *Cox*, 2001 ME 100, ¶ 10, 774 A. 2d 347 (citing 1 ARTHUR LARSON & LEX K. LARSON, LARSON'S WORKERS' COMPENSATION LAW, § 16.06 (2000)).

[¶10] In *Cox*, the worker was injured while operating a company truck on his way to a car dealership to sign papers after he had completed delivery of product for his employer. 2001 ME 100 ¶¶ 4-6, 774 A.2d 347. The employer had given Mr. Cox permission to use its vehicle to undertake his personal errand upon completion of the business purpose, and prior to returning to work. *Id.* ¶ 3. Because the dealership was in the opposite direction from the business delivery, the Court analyzed whether the deviation from the business route for a personal side trip removed the trip from the dual purpose doctrine, becoming instead a second, separate trip for purely personal reasons. *Id.* ¶ 7.

[¶11] The Court affirmed the hearing officer's decision to award compensation, finding that it was rational to conclude that the dual purpose doctrine applied, even though the employee was injured on a pre-approved side-trip for a personal errand after completing the business purpose. *Id.* ¶ 13.

[¶12] Pepsi contends that the ALJ erred when applying the dual purpose doctrine here because Mr. Bailey was merely on his way home from work due to his

illness; he would have gone home and taken the same route home, Pepsi argues, regardless of which vehicle he drove or the business purpose served by driving it. Pepsi further argues that *Cox* is distinguishable because in that case, the employee had difficulty operating the company truck's manual transmission, contributing to the accident, and in this case there is no evidence that Mr. Bailey had any problem driving the truck. We disagree with these contentions.

[¶13] At the outset, Mr. Bailey had both a business and personal purpose for the trip, and there was no deviation for a side trip. Mr. Bailey was on the direct route to his father's residence at the request of Pepsi when he drove off the road and was injured. The business purpose of returning the vehicle to Mr. Bailey's father would have been completed by someone even if Mr. Bailey did not need to go home when he did. *See* 2 ARTHUR LARSON ET AL., LARSON'S WORKERS' COMPENSATION LAW, § 16.02 (Matthew Bender, Rev. Ed., 2020) (stating that because the service to be performed would have caused the journey to be made by someone even if it had not coincided with the employee's personal journey, the dual purpose doctrine applies).

[¶14] Moreover, the decision in *Cox* did not turn on whether the accident was caused by any difficulty operating the company vehicle. The Court viewed that fact as additional support for the finding that the employee would not have been in the truck but for the business purpose. *Cox*, 2001 ME 100, ¶ 13, 774 A.2d 347. Instead,

the decision turned on whether the deviation in the opposite direction constituted a separate trip after completion of the business trip. *Id.*

[¶15] The ALJ did not err when determining that the dual purpose doctrine applied here as an exception to the going and coming rule.

B. The *Comeau* Analysis

[¶16] Because we determine that the going and coming rule does not bar compensation, we address Pepsi's argument that the ALJ erred in concluding that Mr. Bailey's injury arose out of and in the course of his employment. When the facts of a case do not "fall snugly within the arising out of and in the course of employment requirement, closer analysis is required to ascertain whether a sufficient work-connection exists to justify an award of compensation." *Comeau*, 449 A.2d at 366-67. This is done by considering a nonexclusive list of factors identified by the Court that bear on the question of work-connectedness. *Id.* 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).

[¶17] The ALJ in this case determined that the first three *Comeau* factors favor work-relatedness: Mr. Bailey was driving the company vehicle for a business purpose which accommodated Pepsi's needs. The ALJ found as fact that he was specifically authorized by Pepsi to drive the truck. The ALJ also acknowledged that the dual purpose doctrine analysis overlaps with the fourth factor, *see Cox*, 2001 ME 100, ¶ 9, 774 A.2d 347, which she found favored work-relatedness. Having considered the relevant *Comeau* factors, the ALJ ultimately concluded that Mr. Bailey's injury arose out of and in the course of employment.

[¶18] Appellate review of an ALJ's application of the *Comeau* factors is highly deferential; the ALJ need not reach the only "correct" conclusion, but only a conclusion that is neither arbitrary nor without rational foundation. *Fournier*, 2006 ME 71, ¶ 18, 899 A. 2d 787; *Cox*, 2001 ME 100, ¶ 12, 774 A. 2d 347. The ALJ gave due consideration to the *Comeau* factors, and we cannot say that her conclusion that the injury arose out of and in the course of employment is arbitrary or lacks a rational foundation.

III. CONCLUSION

[¶19] The ALJ did not err when concluding that Mr. Bailey's injury was not barred by the going and coming rule because the accident occurred while he was driving a company vehicle for dual business and personal purposes. Furthermore, the ALJ's conclusion that Mr. Bailey's injury arose out of and in the course of employment was neither arbitrary not irrational, based on the facts and circumstances of the case.

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 (Pamph. 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.

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