LINDA WOOTEN
(Appellee)

v.

MAINE TURNPIKE AUTHORITY
(Appellant)

and

CANNON COCHRAN MANAGEMENT SERVICE, INC.
(Insurer)

Argued: September 20, 2023
Decided: March 14, 2024

PANEL MEMBERS: Administrative Law Judges Rooks, Chabot, and Stovall
BY: Administrative Law Judge Rooks

[¶1] The Maine Turnpike Authority appeals from a decision of a Workers' Compensation Board administrative law judge (*Sands, ALJ*) granting Linda Wooten's Petitions for Award of Compensation and for Payment of Medical and Related Services. The Authority contends that the ALJ erred when determining that Ms. Wooten's claim that she contracted COVID-19 at work falls under the personal injury provisions of the Maine Workers' Compensation Act, 39-A M.R.S.A. § 201, rather than the occupational disease law, 39-A M.R.S.A. §§ 601-615. We affirm the decision.

I. BACKGROUND

[¶2] Linda Wooten was employed by the Maine Turnpike Authority for nearly twenty years. In 2021, she was employed full-time in the personal accounts "E-Z Pass" department assisting customers who would call in with account issues. Ms. Wooten was diagnosed with COVID-19 on September 28, 2021, one day after experiencing symptoms. She testified that she believes she contracted COVID-19 while at work from contact with an infected co-worker. Ms. Wooten's COVID-19 diagnosis evolved into Covid-pneumonia, which required hospitalization from October 5, 2021, to October 18, 2021. On November 3, 2021, the Authority terminated Ms. Wooten due to exhaustion of sick leave. Ms. Wooten was released to full-duty employment on November 19, 2021. She filed petitions seeking wage loss benefits and medical payments related to her COVID-19 illness.

[¶3] After two hearings in 2022, the ALJ granted her petitions, concluding that a claim based on a COVID-19 diagnosis can be brought as a personal injury pursuant to 39-A M.R.S.A. § 201, rather than an occupational disease pursuant to 39-A M.R.S.A. § 603. The Authority was ordered to pay total incapacity benefits and all medical bills from September 27, 2021, to November 19, 2021. The ALJ, with a specific focus on risk factors outlined by the Centers for Disease Control and Prevention (CDC), concluded that Ms. Wooten's illness arose out of and in the course of employment, finding as fact that she worked in the same general area of

the office as an infected individual for approximately sixteen hours over the course of September 21, 2021, and September 22, 2021; the infected individual was coughing and sneezing while at work on these two days while unmasked; Ms. Wooten was also unmasked and at various times was working within two feet of the infected individual.

[¶4] The Authority filed a Motion for Further Findings of Facts and Conclusions of Law. The ALJ denied that motion and this appeal followed.

II. DISCUSSION

A. Standard of Review

[¶5] The role of the Appellate Division "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). Because the Authority requested findings of fact and conclusions of law following the decision, the Appellate Division will "review only the factual findings actually made and the legal standards actually applied by the [ALJ]." *Daley v. Spinnaker Indus., Inc.*, 2002 ME 134, ¶ 17, 803 A.2d 446.

B. Applicable Legal Standard

[¶6] The Authority asserts that the ALJ erred when determining that Ms. Wooten's claims fall under the provisions of the Act applicable to personal injuries, *see* 39-A M.R.S.A. § 201, and argues that instead, the occupational disease provisions should have applied. *See* 39-A M.R.S.A. § 601. The Authority further contends Ms. Wooten did not meet her burden to establish a compensable claim under the occupational disease law. 39-A M.R.S.A. § 603.

[¶7] A personal injury is compensable under the Act if it "aris[es] out of and in the course of employment." 39-A M.R.S.A. § 201. Under the occupational disease law, an employee must not only establish that their disease arose out of and in the course of employment, but also that it was "due to causes and conditions characteristic of a particular trade, occupation, process or employment." 39-A M.R.S.A. § 603. For example, in *Russell v. Camden Community Hospital*, 359 A.2d 607, 612 (Me. 1976), the Law Court held that tuberculosis contracted by a nurse at work was compensable under the occupational disease law because exposure to the disease was an inherent characteristic of the employee's occupation. The Court observed that the occupational disease law is not intended to extend to workers who contract a disease "regardless of the nature of the occupation." *Id.* at 611.

[¶8] The Authority asserts the occupational disease law applies in this case, and pursuant to *Russell*, compensation is not authorized because exposure to

COVID-19 is not an inherent characteristic of Ms. Wooten's occupation. We disagree with the Authority's premise. The ALJ concluded that although *Russell* involved an application of the occupational disease law, its holding does not require that all disease claims be brought under that law. We agree. *Russell* does not preclude compensation for diseases that do not fit the definition of an occupational disease.

[¶9] The Appellate Division has recognized that in certain circumstances diseases can be compensable under section 201 of the Act. For example, in *Pickering v. State of Maine*, Me. W.C.B. Dec. No. 17-11 (App. Div. 2017), an Appellate Division panel upheld an award granted to an employee who had contracted Lyme disease at work. In *Flaherty v. City of Portland*, Me. W.C.B. No. 19-31, ¶ 23 (App. Div. 2019), the division affirmed an ALJ's decision concluding that the employee's cancer diagnosis was a personal injury within the meaning of 39-A M.R.S.A. § 201. As the ALJ here noted, the *Flaherty* panel relied on authority that recognizes that various diseases are compensable or potentially compensable under the Act:

> The Act recognizes various diseases as potentially compensable, including, for example, cardiovascular injury or disease and pulmonary disease, 39-A M.R.S.A. § 328 (2001); communicable diseases, 39-A M.R.S.A. § 328-A (Supp. 2018); and certain specified types of cancer, *id.* § 328-B. The Act also makes the condition of mental stress compensable in certain circumstances. *See* 39-A M.R.S.A. § 201(3) (Supp. 2018). Moreover, the Law Court has upheld the compensability of disease either aggravated by or contracted through work activity. *See, e.g., Bryant v. Masters Machine Co.*, 444 A.2d 329, 333, 343 (Me. 1992) (spina bifida, degenerative disc disease, and arthritis); *Brodin's Case*, 126 A. 829, 829, 833 (1924) (typhoid fever). Professor Larson has observed that "it is hardly necessary at this point to say that such

> injuries as disease and sunstroke come within the general term 'injury' or 'personal injury,'" noting the "hundreds of cases cited" for that proposition. 4 Lex K. Larson, *Larson's Workers' Compensation* § 55.02 (Matthew Bender, Rev. Ed. 2019).

Id. ¶ 21. Accordingly, we conclude that the ALJ did not err when applying the legal standard in section 201 of the Act (as opposed to section 603) when assessing compensability for wage loss and medical bills incurred due to COVID-19. [1]

C. Causation

[¶10] Determining whether an injury arises out of and in the course of employment under section 201 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). The Authority argues Ms. Wooten did not establish a causal connection between the employment and her illness because she was not an essential worker and had no regular contact with the public; she was at no higher risk of infection in

[1] The Authority also contends that if Ms. Wooten's claim falls under the occupational disease law, she failed to meet her burden to prove she suffered from a work-related occupational disease. Because we conclude that the ALJ did not err in determining that the personal injury provisions of the Act were applicable in this case, we do not address this argument further.

her workplace than anywhere else; COVID-19 could have been transmitted to her from anywhere; and it was not an inherent workplace hazard. The Authority further contends the Legislature did not contemplate compensation for a highly contagious virus.

[¶11] Despite the Authority's arguments, we follow Professor Larson's guidance that "the requirement of a causal connection with the employment still stands as a bulwark against indiscriminate awards for the common diseases to which everyone is subject." 4 ARTHUR LARSON & LEX K. LARSON, LARSON'S WORKERS' COMPENSATION LAW § 51.06. When assessing causation, the ALJ looked to CDC guidance to develop a list of factors related to the risk of COVID-19 infection in the workplace.[2]

[¶12] After thoroughly considering each factor, the ALJ found the following facts: the only known contact Ms. Wooten had with an infected individual within the relevant time was at work over a two-day period. That individual was symptomatic and unmasked, and at times worked in proximity (within two feet) of Ms. Wooten.

[2] Those factors that relate to risk of infection are:

- Length of time of exposure
- Whether the infected person was coughing, singing, shouting, or breathing heavily
- Whether the infected person was symptomatic at the time of exposure
- Whether the individual or the infected person was wearing a mask at the time
- Ventilation in the space
- Distance of the infected person to the individual; crowding in the space

Centers for Disease Control and Prevention, *Covid-19 – Understanding Exposure Risks* (updated 8/11/2022) https://www.cdc.gov/coronavirus/2019-ncov/your-health/risks-exposure.html

Although they worked in cubicles, both employees used common areas such as the mail area and copier periodically through the workday. Ms. Wooten was unmasked while working in her cubicle. The Authority instituted mitigation efforts, but adherence to many of the policies were left to the individual employees and the policies were not consistently adhered to or enforced.

[¶13] The ALJ also examined the risk factors associated with COVID-19 transmission that were present in Ms. Wooten's life outside the workplace. The ALJ credited Ms. Wooten's testimony that she made extensive efforts to avoid potential exposure in her day-to-day life, including wearing masks, using curbside pickup for grocery shopping, using hand sanitizer after pumping gas; and at the relevant time, Ms. Wooten spent most evenings at home as she was taking an online course that required extensive studying.

[¶14] The ALJ further considered the list of factors identified by the Law Court that bear on the question of work-connectedness. *Comeau v. Me. Coastal Servs*., 449 A.2d 362, 366-67 (Me. 1982)[3]. The ALJ evaluated those factors and found that they inure to the benefit of Ms. Wooten.

[3] The Law Court has identified the following nonexclusive list of factors to consider when determining whether an injury arises out of and in the course of employment:

> (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.

[¶15] We accord deference to ALJ decisions addressing whether an injury arose out of and in the course of employment. *Moore v. Laverdiere's Super Drug* Store, 645 A.2d 613, 615 (Me. 1994). The ALJ "need not reach the correct conclusion, but a conclusion that is neither arbitrary nor without rational foundation." *Id.* (quotation marks omitted). We find no error in the ALJ's conclusion that Ms. Wooten established on a more likely than not basis that her COVID-19 infection arose out of and in the course of employment; that is, it can properly be said to be a "consequence of industrial activity" as opposed to "a consequence of life in general." *See Feiereisen v. Newpage Corp.*, 2010 ME 98, ¶ 6, 5 A.3d 669.

III. CONCLUSION

[¶16] The ALJ's findings of fact are supported by competent evidence in the record, and, 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)

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(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.

Comeau, 449 A.2d at 367 (citations omitted).

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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