STATE OF MAINE
WORKERS' COMPENSATION BOARD

APPELLATE DIVISION
Case No. App. Div. 24-0003
Decision No. 24-13

SUSAN HUSSEY
(Appellant)

v.

MAINE TURNPIKE AUTHORITY
(Appellee)

and

CANON COCHRAN MANAGEMENT SERVS., INC.
(Insurer)

Conference held: September 26, 2024
Decided: October 17, 2024

PANEL MEMBERS: Administrative Law Judges Sands, Chabot, and Smith
BY: Administrative Law Judge Sands

[¶1] Susan Hussey appeals from a decision of a Workers' Compensation Board administrative law judge (*Rooks, ALJ*) denying her Petition for Award regarding an alleged work injury of January 5, 2021, on the basis that she did not meet her burden to prove that she incurred COVID-19 at work. Ms. Hussey contends that the ALJ erred as a matter of law by failing to take administrative notice of how COVID-19 is spread. We affirm the decision.

I. BACKGROUND

[¶2] In January of 2021, Susan Hussey was employed as a toll collector at the York toll plaza, operated by the Maine Turnpike Authority (the Authority). She was diagnosed with COVID-19 on January 13, 2021. In the days following, she experienced symptoms including persistent cough, fatigue, loss of taste and smell,

body aches, and cognitive difficulties. Some symptoms have persisted leading providers to diagnosis her with post-acute COVID syndrome or "long-COVID."

[¶3] Ms. Hussey testified that she believes she contracted COVID-19 while at work from contact with a sick coworker, C.D. She testified that C.D. exhibited symptoms consistent with COVID-19 when she worked with him on both January 5, 2021, and January 7, 2021. The Authority does not dispute that the coworker exhibited such symptoms or that they tested positive for COVID-19 in January of 2021.

[¶4] The ALJ accepted Ms. Hussey's testimony as to her observations and interactions with C.D. Nonetheless, the ALJ found that Ms. Hussey failed to meet her burden of proof given the absence of any information in the record about how the virus may have spread. Specifically, the ALJ wrote:

> The record is absent regarding *how* COVID is transmitted, however—an essential fact that must exist for the Board to find Ms. Hussey's claim compensable. While Ms. Hussey, in her position paper, indicates that "we do not think there is any serious dispute about the fact that Ms. Hussey and her co-workers contracted COVID-19 from their exposure to C.D."—the Employer vehemently disagrees with that fact. There have been relatively few COVID workers' compensation cases in Maine to date. However, the Board recently found a COVID claim compensable in *Wooten v. Maine Turnpike Authority*. In that case, ALJ Sands took judicial notice of a Centers for Disease Control publication that discussed how COVID-19 spread among people and factors that increase or decrease a person's risk for COVID. Here, the record is absent regarding how the virus may have spread to Ms. Hussey and therefore the Board must deny the pending petition.

[¶5] Ms. Hussey filed a Motion for Further Findings of Facts and Conclusions of Law. In the Motion, Ms. Hussey argued: "In this [c]ovid world, we all have a basic understanding about how the disease is transmitted. I do not think one needs to be an 'expert' to understand how [c]ovid is a contagious disease and you are allowed to make reasonable inferences of how it is spread." She further argued that it was not necessary to submit CDC guidelines into evidence, but rather "[t]he Board is required to consider them." The ALJ denied that motion and this appeal followed.

II. DISCUSSION

[¶6] 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). "When an [ALJ] concludes that the party with the burden of proof failed to meet that burden, we will reverse that determination only if the record compels a contrary conclusion to the exclusion of any other inference." *Anderson v. Me. Pub. Employees Ret. Sys*., 2009 ME 134, ¶ 28, 985 A. 2d 501; *Kelley v. Me. Pub. Employees Ret. Sys*., 2009 ME 27, ¶ 16, 967 A. 2d 676*; Civiello v. Coventa Energy*, Me. W.C.B. No. 16-45, ¶ 2 (App. Div. 2016).

[¶7] Ms. Hussey argues on appeal that the ALJ erred by not taking judicial notice of CDC guidelines or other sources of information relative to how COVID-19 is spread. We find no reversible error.

[¶8] Although an ALJ is not required to follow the rules of evidence, the Law Court has determined that ALJs have the authority to take judicial notice, whether or not requested, consistent with M.R. Evid. 201. *See also Phelan v. St. Johnsbury Trucking*, 526 A.2d 584, 587-588 (Me. 1987). Rule 201 provides that a court "may judicially notice a fact that is not subjected to reasonable dispute." Subsection 201(c) sets forth when such notice can be taken:

> **Taking notice.** The court:
>
> (1) may take judicial notice on its own; or
>
> (2) must take judicial notice if a party requests it and the court is supplied with the necessary information.

[¶9] In this case, neither party requested that the ALJ take judicial notice of CDC guidelines or any other documents that address how COVID-19 is spread. Ms. Hussey argues that, even without any request, the ALJ was legally required to consider such guidelines. This is inconsistent with the discretionary language of M.R. Evid 201(c)(1). Unlike subsection (c)(2), in which the drafters chose to utilize mandatory language ("must"), an ALJ is under no requirement to *sua sponte* take

judicial notice of any facts.[1] Whether or not to do so lies squarely within the bounds of the factfinder's discretion.

[¶10] We are also unpersuaded by Ms. Hussey's arguments that COVID-19 claims, unlike other claims, do not require medical causation evidence because "we all have a basic understanding about how the disease is transmitted." Although there are cases in which there is no need for medical causation opinions or evidence because causation is clear and obvious to a reasonable person with no medical training, this is not such a case. Here, the ALJ did not view the facts as clear and obvious and made no inferences regarding causation. The facts, as found by the ALJ, do not compel a finding that Ms. Hussey's illness was caused by an exposure at work. *See Smith v. Me. Coastal Healthcare Corp.,* Me. W.C.B. No. 20-02, ¶ 10 (App. Div. 2020).

III. CONCLUSION

[¶11] The ALJ's findings of fact are supported by competent evidence in the record, the decision involved no misconception of applicable law, and the application of law to the facts was neither arbitrary nor without rational foundation.

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[1] This is in sharp contrast to the mandatory language provided in M.R. Evid 201(c)(2) applicable when the parties make a request. Ms. Hussey cites *Seymour v. Seymour*, 2021 ME 60, 263 A.3d 1079 (Me. 2021), in support of her argument. In *Seymour*, the Law Court vacated a decision reached by a trial court wherein the trial judge was requested, and refused, to take judicial notice of CDC guidelines relative to safety and efficacy of vaccines. The Court found that "it is an abuse of discretion not to take judicial notice if the fact is appropriate for judicial notice and the proponent provides the proper information." *Id.* ¶ 12. The panel finds that *Seymour* is distinguishable from the matter before us in that it addresses a court's mandatory obligation when a party requests judicial notice.

Moore, 669 A.2d at 158. Because the record does not compel a contrary conclusion, the ALJ's decision is affirmed.

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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